THE FEDERAL ASSISTANCE IMPROVEMENT ACT OF 1981

HEARING

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 807

TO REFORM THE LAWS RELATING TO THE PROVISION OF FEDERAL ASSISTANCE IN ORDER TO SIMPLIFY AND COORDINATE THE MANAGEMENT OF FEDERAL ASSISTANCE PROGRAMS AND REQUIREMENTS, PROVIDE ASSISTANCE RECIPIENTS WITH GREATER FLEXIBILITY, AND MINIMIZE THE ADMINISTRATIVE BURDEN AND ADVERSE ECONOMIC IMPACT OF SUCH PROGRAMS AND REQUIREMENTS

(Subsections (c) Through (f) of Section 1005 of Title I)

NOVEMBER 2, 1981

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THE FEDERAL ASSISTANCE IMPROVEMENT ACT OF 1981

MONDAY, NOVEMBER 2, 1981

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met, pursuant to call, at 2:36 p.m. in room 301 of the Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias and Pell.

Staff present: John B. Childers, deputy staff director; William M. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; Jack L. Sapp, professional staff member; Anthony L. Harvey, senior systems analyst (Technical Services); Ann B. Cook, chief clerk; and Peggy Parrish, professional staff member (minority).

OPENING STATEMENT OF HON. CHARLES McC. MATHIAS, JR., CHAIRMAN OF THE COMMITTEE ON RULES AND ADMINISTRATION

The CHAIRMAN. The committee will come to order. This afternoon we will consider Senate bill 807, the Federal Assistance Improvement Act of 1981, a measure that has been offered by the distinguished Senator from Delaware, Mr. Roth, chairman of the Governmental Affairs Committee.

And I would certainly commend what he is trying to do along with others in their work toward the goal of simplifying and streamlining the administration of Federal assistance programs. And, of course, we all, I think, bear in mind the need to have the utmost economy in this day and age in all activities of Government. And the Federal Government should be a model for State and local governments of how best to provide appropriate services to the citizens of the States.

But it seems to me that the Rules Committee should be concerned about the new and unusual rules and procedures that have been proposed by the Governmental Affairs Committee as a technique for accomplishing the goals as to which most of us agree. The ranking minority member of the Rules Committee, Mr. Ford, I believe shares these concerns. And they begin with the heart of the first title of the bill.

I might note at this point that matters in Senate bill 807 which fall specifically within the Rules Committee's jurisdiction are provisions of title I in which lie several novel legislative and procedural concepts.

The driving mechanism for these concepts is the proposed new technique which would empower the President to propose to the Congress grant consolidation plans which would amend existing public laws through the mechanism of a joint resolution. The President would thus be granted very broad powers to name the programs to be consolidated under such a plan, to place responsibility for the administration of the consolidated programs in a single agency, and to specify in detail the administration of the consolidated programs, "including a specification of requirement such as State and local matching for Federal funds, allotment and apportionment, financial management, planning, and eligibility to be used in the plan."

Title I also mandates sunsetting within at least 6 years of all of these Presidential grant consolidation plans. But no provision is made for a transition in an orderly way from the consolidated program to a prior or a new arrangement for the Federal Government's administration of these activities. Nor is there any provision for dealing with statutes not identified in the President's grant proposal plan. Now, this is quasi-legislative activity; it is a technique for amending but not actually amending Federal statutes. And it seems to me that that is something which the Rules Committee and the full Senate will want to look at very carefully.

The "fast-track" committee and the "fast-track" floor procedures that are proposed by Senate bill 807 would dictate that each Presidential grant consolidation plan would be referred to a single committee of primary jurisdiction in each House. And these committees would be given 60 days in which to report favorably on such a consolidation plan—and the plans are not subject to amendment or change. So if no report were made within the prescribed 60 days, the committee would automatically be discharged and the President's grant consolidation plan would be placed on the calendar of each House in the form of an unamendable joint resolution. Motions to proceed to the consideration of these joint resolutions would be in order at any time following the report or discharge of the primary committee—or, if referred, to a secondary committee—and would be deemed privileged, nondebatable, nonamendable, and nonpostponable. As I understand, it would not be in order to proceed to the consideration of other business while such a motion relating to the consideration of a Presidential grant consolidation plan was before either House of Congress, nor would it be in order to entertain a motion to reconsider the vote by which such a resolution was agreed to or disagreed to.

So this is really a fast track—there is no question about that. And I don't think any member of the Rules Committee nor any other Member of the Senate needs to be reminded of our most recent experience with fast-track budget reconciliation where, within a debate limitation of 20 hours, the entire body of Federal laws was open to instant amendment, the process produced a 1,000-page public law with 27 titles amending the code and amending innumerable statutes.

Now, these fast-track techniques severely restrict the flexibility of the Congress and, I think they serve to dramatically alter the deliberative nature of Senate procedure, both on the floor of the Senate and in the committees.

And, of course, these are not isolated examples of new procedures for the Congress. The Congressional Research Service has identified more than 190 public laws containing almost 300 special types of expedited congressional approval or disapproval mechanisms. And many of these provisions place the Congress at a distinct disadvantage when dealing with an aggressive executive branch.

So I hope that this committee, in conjunction with the Committee on Governmental Affairs, will schedule hearings during the next session of Congress to study in depth the nature and consequences of these complex and confusing deviations from the ordinary course of congressional deliberation.

Now, I am glad that a number of our distinguished colleagues are here today, so without further ado I will call upon the senior Senator from Vermont to offer us such advice and counsel as he may have.

STATEMENT OF HON. ROBERT T. STAFFORD, CHAIRMAN OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Senator STAFFORD. Thank you very much, Mr. Chairman. I appreciate the opportunity to come before you and the members of your distinguished committee. I do so to support the purposes of S. 807, the Federal Assistance Improvement Act of 1981, but also to share with you and your committee my serious concern about how the legislation intends to achieve those purposes.

As I understand it, the major purpose of S. 807 is to encourage the consolidation of Federal grant programs and to streamline the regulations associated with them, while still meeting the purposes of those programs. In short, to make Federal grant programs work better.

Clearly, I applaud the goal, but then who could not? But I am deeply worried that the bill before this committee seeks to achieve that goal by corrupting the legislative process in the name of making Congress more efficient.

I have not come here to testify against efficiency in the Congress, I want to stress.

The CHAIRMAN. I don't think the committee wants to sit here and hear testimony against the efficiency of Congress. What we do want to hear is advice as to how, under the banner of efficiency, we are going to perpetrate some very difficult mechanisms that we and our successors will regret.

Senator STAFFORD. I agree, Mr. Chairman. Clearly, we need congressional reform if we are to retain the Congress as the deliberative body that makes crucial social judgments and maintains the separation and balance of power needed to preserve and to enhance human freedom.

There is some agreement, I think, that ideally Congress is a mechanism for gathering together the knowledge and wisdom existing within our society to make judgments needed to solve the problems facing society. That process is not always a tidy one. Indeed, there are many times when it is extremely untidy, as competing ideas and forces clash in public. It is not, by any standard, the most efficient way of doing business. It does, however, protect our freedoms.

There is, as you know, a rapidly growing new theory that seeks to retain the Congress as a mechanism for recording decisions that have already been made elsewhere in society by different processes. As you might suspect, that theory of Congress has growing support among those impatient with the congressional pace or displeased with congressional outcomes. Some of those who advance this new theory of Congress are those within the Congress whose views fail to achieve majority support. But most of the advocates of this theory are outside of the Government or outside of the Congress, often in the executive branch.

Our recent adventures with the budget reconciliation resolution process have provided each of us with some interesting experiences about what can happen to the deliberative legislative process when we agree to shortcuts and to so-called increased efficiency.

My staff and I continue to be reminded, usually on a case-by-case basis, and often most painfully, about some of the changes in previous laws that were mandated in the reconciliation resolution, but that escaped our sense of awareness at the time. I fear the measure before you contains even more potential for similar mischief.

As I understand it, if S. 807 is enacted, the executive branch would have a greater voice in passing judgment on the congressional intent of legislation produced in the authorizing committees of the Congress. The administration would be able to submit to Congress, in the form of a joint resolution, proposals that could consolidate or even repeal programs created by the Congress.

Indeed, as you pointed out, Mr. Chairman, if an authorizing committee were unable to act upon a proposal within 60 days, the committee could be discharged of its responsibility and the proposal would go on the calendar for action. Before the full Senate the proposal would be privileged, nondebatable, and impervious to amendment. In short, the decision would be made by an up-or-down vote without deliberative scrutiny, public hearings, amendments, or Senate debate.

That frightening scenario would result if a committee chairman were influential enough to prevent committee deliberation for 60 days, or if he were without the influence to require such action. Each situation is unlikely, but hardly beyond possibility, particularly if the scenario includes a strong or popular President and a sympathetic committee chairman.

We should all be able to agree that such shortcutting of the usual legislative safeguards is unacceptable.

Like each of you on the committee, I won some and lost some during the recent reconciliation process, and I am speaking as chairman of the Environment and Public Works Committee and of the Education, Arts and Humanities Subcommittee of Labor and Human Resources. Even when I was able to resist the administration's call for block grants in programs dealing with education and with handicapped individuals, my feeling of success was not without reservation. I was distressed that some of my colleagues who disagreed with me were unable to offer amendments to substantive provisions of the reconciliation resolution.

And, of course, I was even more distressed in several instances to find out that I was unable to offer amendments in situations where I was opposed to the changes in the laws that were being made.

S. 807 would offer a new path to drastic changes, or even repeal, of existing law without the safeguards of regular legislative process. S. 807 would certainly help tilt the balance of power away from the Congress and toward the executive branch.

In the field of education, provisions that safeguard the rights of disadvantaged children could be wiped out. Additionally, requirements for maintenance of effort, which have proved so helpful in attaining educational goals, could be swept aside.

As chairman of the Committee on Environment and Public Works, I have similar fears about possible dangers to environmental laws that have taken decades to develop. This year we have already completed the first round of action on reform of the construction grant program of the Clean Water Act, a program that has cried out for reform. The legislation was introduced in the usual manner: six public hearings were held, 50 witnesses were heard, Members heard from other constituents and interested parties, the bill was exposed to markup in subcommittee and full committee, and was passed unanimously by the Senate last Tuesday. The bill contains significant reforms, not as much as the President wants, but as much as Congress feels is warranted after hearing all the arguments—and it was done in full public view and after full discussion.

The Committee on the Environment is also trying to work its will on the Clean Air Act. We have held 24 public hearings on that measure and hope to go to markup soon. It took us 3 years to pass the current version of the Clean Air Act, 3 long hard years, in 1975, 1976, and 1977. I hope it doesn't take us that long this time, but it's possible.

Also on our committee's agenda is a review of the substantive body of the Clean Water Act, which we will take up next year.

The thought of using the procedures that would become available through passage of S. 807 to make changes in the Clean Air Act or the Clean Water Act strikes fear into the hearts of all persons who believe in effective, balanced environmental laws. Measures as complex as the Clean Air Act and the Clean Water Act cannot be dealt with, in the judgment of this Senator, on a fast track and under a gag rule without doing violence to the concept of freedom and justice.

Our only control over powerful special interests—and it may be a diminishing control—comes through the deliberative and public legislative process.

I cannot personally conceive that any person in this room would knowingly ask the Congress to relinquish its constitutional role or its legislative function. Nor can I conceive that it is anyone's intention to shut the public out of the legislative process. It is even more inconceivable to me that it is anyone's intention to vest overwhelming legislative power in unelected, unseen, and anonymous members of the executive branch of Government and in those with private access to members of the executive branch.

For those reasons, I would urge this committee to give careful attention to the consequences of this measure, and to weigh wheth-

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er there is any value at all in trying to streamline Federal programs at the expense of the very integrity of the legislative process. If it is the judgment of this committee that the goals of this legislation demand some congressional reforms, then I would respectfully urge you at the very minimum to preserve the basic ingredients of the legislative process.

To that end, I make two recommendations.

First, that an affirmative vote by a majority of the members of an authorizing committee of the Senate be required before any consolidation resolution envisioned by this legislation could be considered on the floor of the Senate, except, of course, by unanimous consent.

And, second, that the consolidation resolution be subject to debate and amendment by any Member during action on the Senate floor.

Mr. Chairman and members of the committee, to do anything less, I submit, would be to permit the Senate to become a passive, even a submissive adjunct, to the executive branch of our Government and to those who enjoy special private access to the executive branch.

Mr. Chairman, I appreciate the opportunity to express my views to you and to the members of your committee.

The CHAIRMAN. Well, Mr. Chairman, we are delighted to have your views. And I gather from what you say that you feel that this expedited or fast-track procedure really wouldn't allow sufficient time for thoughtful consideration of grant consolidation plans.

Senator STAFFORD. That is my fear, Mr. Chairman, not only would it not allow sufficient time, but the possibility that legislation could reach the floor under this process without the opportunity for Members to offer amendments to it, to debate it adequately, or to vote anything except an up-or-down vote at the conclusion.

The CHAIRMAN. I have to confess that I have a fear that the words "fast track" might end up by being just a euphemism for two four-letter words.

Senator STAFFORD. I will let the Chairman say what the two four-letter words are. [Laughter.]

The CHAIRMAN. Well, the two four-letter words that I had in mind were "rail road." [Laughter.]

Senator STAFFORD. I would concur, Mr. Chairman.

The CHAIRMAN. What about the 60-day provision? When you consider that we don't know what vast programs might be submitted for revision, is 60 days as a fixed period, absolutely fixed, like the laws of the Medes and the Persians, written in stone—is that a wise provision?

Senator STAFFORD. In my judgment, Mr. Chairman, it would not be. It might be more than adequate for some issues that we deal with, but take the most complicated issue that the Environment and Public Works Committee currently faces, we have begun work on possible amendments to the Clean Air Act with hearings which extended through the early part of the winter, all through the spring, and into the early summer. There is no way, in the judgment of this Senator, that an act of that complexity could be handled in 60 days, nor even in 120 days.

We will need all of this year, and we will be lucky if we can produce a bill before we take sine die final adjournment in this first session of the Congress. To lose that bill to the floor of the Senate on a fast track after 60 days would mean the Senate likely would have no alternatives and might very well pass something that would be destructive of the environmental programs of this country without even realizing that would be the result.

The CHAIRMAN. Without even knowing what we had done.

Senator STAFFORD. That's right.

The CHAIRMAN. Well, one final question. One of the provisions that I understand—because the amending process can be abused in the Senate, it can be made an instrument of delay, and has been—so I understand the absolute prohibition against amendments, but how do you feel about that?

Senator STAFFORD. I think it's a grave mistake notwithstanding the modern trend toward excessive amendments under certain circumstances, to try to get around that difficulty by prohibiting any amendments. Oftentimes a bill is actually improved on the floor of the Senate. It is the essence of what we call the opportunity for the Senate to work its will.

The CHAIRMAN. Would there be some middle ground here, assuming we want to go forward with this idea at all, of, say, limiting it to germane amendments?

Senator STAFFORD. I think that might be a sensible approach, Mr. Chairman.

The CHAIRMAN. Well, we appreciate very much your being here today, and I personally find a great deal to agree with in your statement.

Senator STAFFORD. I thank the chairman very much.

The CHAIRMAN. Our next witness is the distinguished Senator from Louisiana, Mr. Long.

STATEMENT OF HON. RUSSELL B. LONG, RANKING MINORITY MEMBER OF THE COMMITTEE ON FINANCE

Senator LONG. Mr. Chairman and members, before I read my prepared statement let me say that I would like to see the committee recommend that the Senate adopt a rule to say that whenever 60 percent of the Senate feels disposed to limit all amendments to germaneness, that that could be invoked and that thereafter amendments would have to be germane.

We can obtain germaneness now by way of a cloture petition—and sometimes in handling a major revenue bill, when that was my responsibility, I did suggest that we vote cloture just in order to limit the amendments to those that were germane.

The CHAIRMAN. Not really to limit the time but to limit the scope of the debate.

Senator LONG. I have done that, and the Senate has gone along with me on occasion just to require germaneness. In fact, I said at the time that I would help Senators to obtain more time, even if it took unanimous consent, but that we needed to limit the bill and the scope of what we were working on. If it's a major tax measure, and if you didn't limit it to germaneness, anything other than a constitutional amendment could be added to that bill. So just in order to try to have some limitation on the breadth of legislation, I

think it would be very good if we could obtain a rule in the Senate where the Senate could limit amendments to a bill to germaneness. I am not seeking to limit the amount of time people can speak, just simply trying to stay germane to whatever bill we have before us.

I now turn to the matter at hand, S. 807. I cannot support this bill, Mr. Chairman. I can understand that some people may find it frustrating to deal with certain problems through the ordinary legislative processes. But I cannot agree that either the problems or the frustrations justify the Congress abdicating its lawmaking role.

I believe it would be a serious error for the Congress to adopt the procedures envisioned by S. 807. First, the process itself could have results which go far beyond what is now envisioned. Second, adoption of this legislation would set an unfortunate precedent for further changes of our basic constitutional processes as a shortcut to achieving desired legislative changes.

It is sometimes difficult to bring about changes in the law, even when the changes in question enjoy a great deal of support. But the very difficulty of going through the legislative process is an important part of the protections afforded by our constitutional system of government. It should not be abandoned.

Under S. 807, the President would transmit to the Congress a consolidation plan which merged one or more Federal assistance programs. After a narrowly limited period for committee consideration—60 days in the case of the committee with primary jurisdiction—a privileged, nondebatable motion could be made to proceed to the consideration of an approval resolution. If that motion was agreed to, the approval resolution would remain the business of the Senate until it was disposed of.

This process would give the consideration of consolidation plans precedence over any other matter to come before the Senate. What is the reason for this extraordinary priority?

This new process would offer no opportunity for Congress to amend the consolidation plan either in committee or on the floor. Why should the Congress be unable to amend a legislative proposal?

Under S. 807, the plan itself would never be voted on even though it would have the effect of law, changing laws enacted by the Congress. Under S. 807, the Congress would only be able to vote up or down on a resolution to approve the plan proposed by the President.

This bill provides for what amounts to a total reversal of the constitutional responsibilities of the President and the Congress in the lawmaking process. Under the legislative process, as it exists today, the President can make proposals, but laws are made by the Congress. Bills are considered, debated, and amended in committee and on the floor. The differing products of the two Houses are compromised in conference and then ratified in the Senate and the House. The finished product, the result of careful deliberation, is presented to the President for his approval or disapproval.

Under S. 807, the process would be just the opposite. The President would present to the Congress a detailed consolidation plan which could be a major change in law. The Congress, after very limited time for consideration and no opportunity for amendment,

would simply vote to approve or disapprove the legislative changes proposed by the President. To make matters worse, S. 807 would specifically allow the President to make last-minute changes. This could lead to a committee having virtually no time to consider the President's revised proposal.

S. 807 would authorize the President to establish the terms and conditions of programs included in a consolidation plan.

The CHAIRMAN. If I can interrupt you, the way you have described this is such a telling example or illustration of the change that has taken place in Washington. In the administration of William Howard Taft, I recall once hearing or reading that a crisis arose over a weekend, and the President called on the Attorney General to draft a piece of legislation over the weekend so that Monday morning it could be submitted to the Congress, simply because he couldn't communicate with Members and he felt that would expedite the process.

And there was a storm of controversy in the country: Imagine, a member of the President's Cabinet, a member of the executive branch, writing a bill. And it was a constitutional issue.

And now, look, as you have described this process, how far we have come.

Senator LONG. We have gone full circle. Congress, in considering the plan, would have no ability to modify any of those terms and conditions established by the President but could only reject or accept the plan as a whole. Terms and conditions are the very fundamental elements of which programs are made—eligibility standards, formulas for allocating funds among the States, non-Federal matching requirements, and so forth. It is unreasonable to ask us to deny our constituents their right to be represented in developing these basic rules which determine how their taxes are to be spent.

I recognize that S. 807 includes some limitations on what a President can include in a consolidation plan. But when you examine them closely, you will see that these limitations place very little restraint on his freedom of action. To cite one example: The President could send up a consolidation plan to merge the aid to families with dependent children program and the food stamp program; depending on his inclinations, the President could design such a consolidation so as to cut back the food stamp program drastically or to vastly increase the scope of the AFDC program. In the former case, the President could propose combining the two programs and requiring that States pay part of the cost of the combined program, the way they do now for part of the cost of the AFDC. Since States do not pay for food stamps now, the substantial additional cost would force many States to cut back sharply on the combined assistance levels.

In the alternative, a President could provide for full Federal funding for AFDC, as is now the case for food stamps. The consolidation plan could also drop the present AFDC eligibility limits in favor of the much broader food stamp eligibility standards. In effect, this would create a new national guaranteed income program with no opportunity for Congress to amend.

In either event, I can see no reason for us to create the mechanism under which a President could present such a legislative

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package to the Congress on a take-it-or-leave-it basis, without any opportunity for amendment.

It might be argued that precedents already exist for the type of procedure proposed in S. 807. Some might say that the reorganization plan authority is similar and that an analogous procedure existed for legislation to implement the recent multilateral trade negotiations. But neither of these authorities are really comparable to what is proposed in S. 807.

Let me just add here, Mr. Chairman, that with regard to the areas that I have discussed—food stamps, the AFDC program, guaranteed-income proposals—I really think that I would be as likely to agree with the present occupant of the White House about those subject matters, as with any President who has served there for many, many years.

The CHAIRMAN. You mean the substance of the bills.

Senator LONG. Basically I like his attitude, that people ought to be required to work, that we should pay them to work rather than pay them for just doing nothing. I generally agree with President Reagan's stated philosophy, not only since he has become President but in the many speeches he made in this general area before he became President. But I do not think that we should legislate, even if we agree with him, in this fashion.

And it is my understanding that this proposal does not have its genesis with the man who now occupies the White House; this was a legislative recommendation that was being discussed in the Governmental Affairs Committee before President Reagan assumed the Office of Chief Executive.

I understand that the only portions of the bill that had been referred to the Rules Committee are those few sections that deal with committee, Senate and House floor procedures. Those are the provisions to limit the committee to 60 days of consideration, to make the resolution of approval highly privileged, and to require that the resolution remain the Senate's or House's business until disposed of.

As a starter, I would urge the Rules Committee to report the bill out with those provisions removed. I would also hope that you might indicate in your committee report that you feel that the entire procedure contemplated is unwise, an abdication of our legislative lawmaking role.

I have a chart here that I would like to have included in the record, showing how this proposed procedure would compare with the present one.

The CHAIRMAN. It will be included in the record.

[The following was received for the record:]

COMPARISON OF PRESENT LEGISLATIVE PROCESS WITH S. 807

Present process	*Process under S. 807*
President submits bill to Congress; if introduced, bill is referred to appropriate committee(s) without a time limit.	President transmits a "consolidation plan" to Congress to make various changes in law; a joint resolution of approval is introduced in each House, and the resolution must be reported by the committee to which it is referred within 60 days of referral or that committee is discharged from further consideration.

The bill may be amended in committee....	The "consolidation plan" may not be amended in committee; only the resolution of approval may be acted on, up or down. However, the President may modify the plan any time before the resolution is reported.
The bill is amendable on the floor, with no germaneness requirement.	The "consolidation plan" may not be amended on the floor; only the resolution of approval may be acted on, up or down. The motion to proceed to the consideration of the resolution is privileged and nondebatable; when the motion is adopted, the resolution becomes the Senate's business until disposed of.
The bill becomes law only after House and Senate resolve their differences and send the identical bill to the President. His choices are to accept or reject the product of Congressional deliberations.	If the joint resolution is adopted by the House and Senate within 90 days of its initial submission, the "consolidation plan" goes into effect—that is, the Congress may only approve or disapprove as a whole the changes in law proposed by the President.

The CHAIRMAN. Now, you are in the position of being able to give the committee advice on the basis of really unique experience here in the Senate. You have been a Senator from Louisiana for many years; you have been majority whip; you have been a chairman of one of the most powerful committees of the Senate. So I think we have to take what you have to say with a great deal of respect and give it a great deal of weight. And I think you have given it further credibility by saying very frankly and honestly that you agree with the President in his basic philosophical thrust, that you are not trying to thwart him in any way.

So I think your testimony is of great value.

Now, let me ask you about one aspect of this that I think only someone who had lived with the Senate rules for a long time and understood them, as you do, could really fully understand and appreciate, and that is this: Title I of this bill significantly amends, without reference to the Standing Rules of the Senate, but it does significantly amend the Standing Rules of the Senate; it is a totally different procedure.

Now, is this the proper way to make changes in the Senate rules? The Senate rules can be amended, as provided by rule 5, but there is no reference at all to that in this legislation.

Senator LONG. I would agree with you, Mr. Chairman.

It is contemplated in the rules of the Senate—and I think in many respects that is a compact among Senators—that a proposal to amend the rules of the Senate is subject to debate unless and until two-thirds of the Senate, 67 Senators, vote to bring that debate to a close. For a long time we have felt that to protect a minority from being run over roughshod, or railroaded, to use the term you mentioned earlier by changing the rules of the Senate, that those resisting such a change would have the opportunity to debate under circumstances where the proponents would need a two-thirds majority.

What you suggest is—and I think that is another cause for concern—that that opportunity of those who might be opposing the legislation would be further bypassed by in effect amending the rules this way.

Now you and I know, Senator, that many times those who are in the minority prove to be right, at least in part. Many times I have said on the Finance Committee, that even a blind hog finds an acorn now and then, someone you would least suspect will show up with a good idea, or can find something wrong with a bill where you never anticipated it, and now and then they might just surprise you.

So that the whole purpose of having a Senate—the idea of having not one but two Senators from each State—is that they can make a contribution, and that their judgment just might be in the national interest.

The CHAIRMAN. Well, this is an area of my concern. Let me ask you about your views of the automatic sunset provision, the fact that regardless even of what the President puts in the consolidation plan, this would require the sunsetting of the consolidated program at not more than 6 years from the date of consolidation.

Does that appeal to you as an orderly procedure?

Senator LONG. No; I don't think so. It is not clear to me just what you go back to after the 6-year period. I am not as thoroughly familiar with that part of it, though, Mr. Chairman and Senator Pell, as I am with the aspect of it which would amount to an abdication of our responsibility.

Now, if it can be demonstrated that the Congress is incapable of dealing with any of these particular issues—let's just take the two I mentioned, the question of whether we ought to go to a block grant program or whether we ought to have a guaranteed annual income or something of that sort—if we are going to decide issues of that magnitude, why shouldn't they be decided in an area where there is plenty of room for discussion, where people can propose amendments, make various suggested changes? Why should we be handcuffed or straitjacketed? When somebody can make a good point and find the majority of Senators in agreement with him, why should this judgment not be reflected in the ultimate product of the Congress? It seems to me that that is totally contrary to our whole purpose. I have not seen the proof that we can't reach our decisions without the abdication advocated in this legislation.

The CHAIRMAN. Now, if this procedure were to be adopted, and the President would submit some grant consolidation plan, that would really have the effect of in some cases repealing and in other cases suspending and in other cases amending statutes.

Senator LONG. Of course. It certainly would.

The CHAIRMAN. But this isn't the way that the Constitution provides for altering statutes.

Senator LONG. Furthermore, Mr. Chairman, as the discussion between you and Senator Stafford brought forth, you know we haven't even begun to develop the full potential of mischief under that reconciliation process in the Budget Act. I have seen some of it. It can be used to put on the statute books ridiculous provisions that could never hope to have become law otherwise. Fortunately, we are managing to repeal some of them before they become effective.

I can recall that the House sent us a whole raft of proposals to increase the cost of the welfare and health programs on last year's reconciliation bill, which was supposed to be a bill to save money,

to balance the budget. You say, well, how could they do that? Well, they simply had all the effective dates of those provisions occur at the end of the budget year, and in order to agree to anything, to achieve the savings that the Senate had voted, those of us speaking for the Senate had to go along with quite a bit of that mischief in order to get them to agree to the parts that would have saved billions of dollars.

Now, we did succeed in knocking much of that out in the reconciliation bill this year. So at least that is one good thing that you can say for the reconciliation process we have now, that where it provides a streamlined method to do something the majority would never do if they could vote on it on its own merits, it does also provide a streamlined opportunity to get rid of the same kind of mischief.

But it would be better if we would have more time to consider it so that this kind of problem would never occur in the first instance.

The CHAIRMAN. Senator Pell?

Senator PELL. No questions, I am just getting the flavor of the legislation.

Senator LONG. Thank you so much.

The CHAIRMAN. Thank you very much for being here. We are now privileged to have as our next witness a Representative from Nebraska, Mr. Hal DAUB.

STATEMENT OF HON. HAL DAUB, A U.S. REPRESENTATIVE FROM THE STATE OF NEBRASKA

Mr. DAUB. How are you, sir?

The CHAIRMAN. We appreciate your making the long journey over from the other side.

Mr. DAUB. Senator, it is always a privilege to be in the other body. I have a short statement that I would like to read for the record, and I would be delighted to answer your questions, if I might do that.

The CHAIRMAN. Fine.

Mr. DAUB. Mr. Chairman, I commend you and the members of this committee for your interest in section 1005 of the Federal Assistance Improvement Act of 1981. Senator Roth has shown great leadership in introducing this legislation in the Senate and reaching a consensus on the Senate Governmental Affairs Committee. As you may be aware, I have introduced this legislation in the House.

The purpose of section 1005 is straightforward: it establishes procedures whereby timely consideration by Congress of executive reorganization plans will be insured. The legislation accomplishes this by providing a 60-day consideration period of a consolidation plan by the House and Senate committees with primary jurisdiction over the programs to be reorganized. Within 75 days of receipt of an executive consolidation proposal, any committee with secondary jurisdictional interests will have 15 legislative days to report its recommendations to the House involved.

It is important to note that the committees involved can either accept or reject a given plan within these time limits. However, no committee can expect that the age-old tactic of burying the plan

will result in its silent death. In such an event, the committee will be discharged from consideration, and the measure will be placed on the appropriate calendar of the House involved.

I must stress that this section is not an attempt in either philosophy or in fact to bypass normal congressional channels in the consideration of any given restructuring plan. All relevant committees with jurisdiction over the subject matter will have ample time to consider a consolidation plan and report their recommendations to the House or Senate.

I will not pretend that this section of the bill requires only minor adjustments in the business of the Congress. It contains some strong, but manageable, procedural medicine. In the area of governmental grant-in-aid programs, congressional progress has been so stunted that nothing short of strong procedural medicine will suffice.

Today, in its relations with State, local, and nongovernmental grant recipients, the Federal Government is facing a crisis of credibility. This crisis of credibility is due largely to the Byzantine complexity of grant programs.

This complexity has resulted in Federal Government costing more and achieving less. For example, in my district, officials at Eppley Airport have recently turned down a Federal construction grant totaling $1,028,000. One of the primary motivations for these officials was their utter disgust with the oppressive regulations attached to the grant.

This redtape not only defeats the goals of Federal programs but adds greatly to the cost of these programs. In 1966, the total cost of Federal grant-in-aid programs to State and local governments was $7 billion. Today that cost is $88 billion. During this period, the number of the different programs has ballooned from 50 to over 1,100 with Federal regulations now numbering a staggering 1,200.

Throughout this period, Congress has remained content to pile one grant program upon another, mindless of the muddle being created.

Despite the authorization by Congress of over 1,100 grant programs since 1966, only 5 consolidation plans have been approved.

Section 1005 of the Federal Assistance Improvement Act is the vital provision in facilitating timely consideration of needed consolidation plans. It is the heart of the legislation.

Again, let me emphasize that this section does not mandate reorganization of grant programs, nor does it mandate forging these programs into block grants, although Congress would be free to consider these options. The mandate of this proposal is clear and precise, executive consolidation plans must be reviewed in a timely and organized fashion by the U.S. Government.

Mr. Chairman, I urge you and members of this committee to preserve section 1005 of the Federal Assistance Improvement Act of 1981 in its entirety.

I would like to comment beyond my formal remarks, if I might, that some of the testimony of Senator Stafford and Senator Long I found most engaging, and I find that particularly with reference to this body's rules I really wouldn't have the experience or the knowledge at this point to indicate what might be procedures and methods of approach that should be preserved by the two-thirds

rule, the cloture rule, or this sort of thing. I understand that concern.

On the House side, I would say that many, many of these kinds of things are reported to the floor with a closed rule and in fact a delimiting feature in the rule itself that there should be not even motion to reconsider. So that in our body happens to be a procedure that tends to be more normal than I suggest it would be here.

The CHAIRMAN. Let me ask you this question. Does it, in your judgment, amend or impact on the Rules of the House of Representatives?

Mr. DAUB. Yes, it does. To the extent that it says in advance this is the way it is going to be, regardless of the content or the substance of the rule.

The CHAIRMAN. It is no longer, then, at the discretion of the House Rules Committee as to whether you are going to have a closed rule or whether you are going to have greater or less amount of time.

Mr. DAUB. In this particular kind of a case, that is right. And I guess what I am looking at, and find, I guess, in the revolution that you referred to, how we have come full circle, starting to try to decide how Congress, under procedures like these, certainly will afford ample opportunity for a full hearing on an executive branch consolidation proposal; there will certainly be substantial opportunity for hearing and debate and testimony from all persons or entities concerned.

The thrust of it would be to shorten that all into an up-or-down vote, if you will, and Congress certainly, even if there were a motion for disapproval in either of the referred committees, have an opportunity then to let that stay where it is until a Member calls up that motion for disapproval as a privileged or highly privileged motion on the floor of the House.

The CHAIRMAN. You say that you are not an expert on the Senate rules. Let me say, I don't know anybody who is an expert on the Senate rules.

But because it is important and because you have raised that subject, just let me read you briefly the two rules that seem to me to be pertinent, so that you are aware of part of this difficulty on this side of the Hill.

Senate Rule 5 says that:

> No motion to suspend, modify, or amend any rule or any part thereof shall be in order except on 1 day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof.

Now, skipping over to rule 22, which touches on how you do that, it is provided in rule 22 that:

> The Presiding Officer shall, without debate, submit to the Senate by a yea and nay vote the question: Is it the sense of the Senate that the debate shall be brought to a close? And that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn, except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting.

So if this in fact is—and that is what I suppose we are going to have to consider here—if in fact this does amend the Senate rules, then the question is: Are rules 5 and 22 applicable? And it could affect the outcome.

Mr. DAUB. Or perhaps in a study of that, given the appropriate determination that the thrust of this procedure might be one that can be indeed useful as we proceed through this decade and forward, that in fact a clear definition or restructuring of the rule as printed in the legislation before you, so that the Senate has its prerogative. I understand that, and I wouldn't comment further than that.

The CHAIRMAN. Let me just ask you this question. Senator Stafford, who had a long career in the House, seemed to feel that the 60-day period as a blanket provision, an inflexible universal provision, was unsatisfactory.

How do you feel about 60 days?

Mr. DAUB. I feel it's more than adequate. And I should say that that is based not only on the privilege of being a Member of the House now for some 10 months, but having been a student of the program since I interned for Senator Sam Ervin of North Carolina—I guess he saw a Republican and thought there was some hope for salvation and he hired me back about 20 years ago, and I was in the Constitution Rights Subcommittee, the Senate Judiciary Committee, to get my start in watching this process. And I am concerned that the idea of a consolidation—and if you look at the five titles, they are far afield from the language that this particular Rules Committee hearing is designed to address—and you look at the overlapping procedures that title I is aimed at, at the auditing procedures that are burdensome, and, two, the cross-cutting problems in title 3, the Funding Simplification Act of 1974—and this particular legislation by Senator Roth, of course, kind of got its seeds in 1973, prior to this, and even some of our current experiences with block grants, what you find out is that any executive or executive branch dealing with regulations that that branch has promulgated in the first place—the House and Senate are not involved in writing the regs in most cases, though we may start to think we may need to be, but, at any rate, we are not normally engaged in that process in the legislative bodies—it seems to me that what is at stake is an administration that wants to consolidate is going to have to work hand in glove with that committee to begin with, and in that 60-day period of time it better be right before it gets there, or it's going to get a motion for disapproval and then that committee's impact is going to be certainly of great weight on the floor of either party should they be called up.

So I would think that 60 days is more than enough time, because we need to make this administrative system we have work better, and 60 days of session—it might be 2, it could be as much as 4 or 5 months, too, depending on the time that the plan or plans are submitted.

The CHAIRMAN. Senator Pell?

Senator PELL. Thank you, Mr. Chairman. As I see it, we really have the broad philosophical problem here and then some specifics, and I guess I have problems in both areas. My view is that categorical grants are a good thing in general because they define the purpose for which the money is to be spent.

Philosophically, I can see many reasons why the States should do some of these tasks and make their own local decisions, but I am wondering if in that case it wouldn't be better to transfer to the

States the taxing powers and let them raise the money? But I think it's wrong for the Federal Government to raise the money and then turn it over carte blanche to the States.

And it seems to me that this legislation is fine-tuning of the block grant process, and I am wondering—and I would be interested in your ideas, Mr. Daub—I think we start from different premises: You probably do not approve of the categorical grant philosophy per se, is that not correct?

Mr. DAUB. I would say to you that in fact I had great reservations and stood firmly opposed to certain attempts that were being made in this last period of time to move, for example, in learning disabilities and those kinds of things, from categorical to block. I do not view this legislation, Senator, as aimed only at figuring a way to make block grants work out of consolidated programs that have always been categorical; in fact, I view this as a structure by which the opportunity will exist for us to in fact streamline categorical programs as well, and do not view it only as designed to facilitate conversion to block grant.

Senator PELL. You don't look on it as a backdoor escalator to the block grant route.

Mr. DAUB. There are prerogatives that I wish to remain solely within the purview of the Federal Government, not only because of the taxing power, Senator, but by virtue I think of the sensitivity of the program to the change in the wind, be it Clear Air Act, Clean Water Act, this kind of thing.

Senator PELL. Well, let me be very extreme and perhaps rather subjective, but I have a little educational program that is called the metric education program, highly unpopular, but the only way that we could get the metric system ever implemented in the schools, because of its unpopularity, was to have it as a categorical grant. Now that is being lumped in with a whole lot of other programs in a block grant, and we will find ourselves going backward or standing still in metric education. Now, that is not a world-shaking subject, the Republic is not going to rise or fall on it. But under this backdoor approach, it would seem to me that where the program is unpopular, as my metric education one is, that would be the coup de grace for it, would it not?

Mr. DAUB. Senator, I want to be cautious and not comment on metric, but to use the format of your analogy——

Senator PELL. Take some other unpopular program.

Mr. DAUB [continuing]. And indicate isn't that the potential now for an unpopular program in some way to be merged or consolidated or moved or underfunded or paid no attention to?

Senator PELL. Well, if it goes in a block grant, it will be. You can think of certain programs that would be rather unpopular in Mississippi that wouldn't be in Rhode Island, and vice-versa.

Mr. DAUB. I would not like to abdicate the responsibility of the House and the Senate to look into that kind of a thing, and that is why I think the procedure of the referral to the germane committees, the hearings and the motions to disapprove, can occur. Again, I think the Senate must look at its own rules—I do not wish to speak to that; I wish to say that as I read the matter affecting the House rules, I believe we could do it. And I think if in fact an unpopular program finds that kind of a recommendation, then that

seems to me to be part of the process; it could be true now as it would be under this bill.

Senator PELL. Now we come to the specifics—I have stated my broad-range reservation here. I think there is a 60-day time limit, and knowing the way certainly our body works, if a chairman wants to dig his feet in, I can't imagine—so as not to consider it—I can't imagine that that item would be considered. And I think that this would put very severe time constraints on the authorizing committee. If everything is in shape, if everybody on both sides of the aisle is for it, there is no argument—60 days is fine, 30 days is too much. But if you have a couple of people or a chairman who are opposed, 60 days is about a 160 days too short.

The CHAIRMAN. If the Senator would yield for a comment, if everybody is for it, I would be very worried about it. That's the time you may need the full 60 days, if everybody is for it.

Mr. DAUB. Again, looking at both your points of view, I think the 60 days strikes at a point wherein the legislative process is not without a head. That is why we are all involved in Rules Committee structures on both sides and in chairmanships and in procedures that either utilize that 60 days or there is a discharge provision that gets it to the floor.

By the same token again, I did say, if you recall, in my formal remarks, Senator, that I did admit this was strong medicine for a system that has a threshold of paperwork and regulatory activity far greater than a lot of us probably ever dreamed would occur 20 years ago.

Senator PELL. Now, also, as I understand it, this bill would provide for no amendments unless offered by the executive branch, is that correct?

Mr. DAUB. That's correct.

Senator PELL. What is the reason for that?

Mr. DAUB. Again it's the idea that a consolidation program comes from an executive branch point of view, and it comes to the Congress saying we didn't make the law, these are the problems we are finding with it, we propose this change or consolidation, and we would like to streamline it to require cross-cutting to be righthand and lefthand coordinated, and this is how we would like you to consider the regulation for that new purpose, as we see it; and in 60 days please tell us yes or no.

To the extent that it is modified two, three, or five times, or disagreed to in one House and then not agreed to in another, then the back and forth of it would make the effort to streamline probably frustrating and more easy for a committee chairman who wished to hold it up in one House or the other.

Senator PELL. Am I correct in saying—and this I recognize is outside the purview of our committee—but there is no maintenance-of-effort provisions in this legislation.

Mr. DAUB. Correct. Again, we are looking at a mechanism—only a mechanism—for the referral of a plan from the executive to the appropriate jurisdictions of each, the House and the Senate, and we would like, I think, all things considered, to avoid the conference committee, too, by virtue of an executive reorganization plan; it should be either up or down.

Senator PELL. And would it be correct, too, that the Federal Government would be curtailed in its monitoring or enforcement activities?

Mr. DAUB. The Federal Government would be curtailed?

Senator PELL. Curtailed in its monitoring or enforcement activities.

Mr. DAUB. Of the consolidated plan, if agreed to?

Senator PELL. Yes.

Mr. DAUB. I wouldn't have that understanding of it. I think again we are dealing with the structure—and you may wish to refer me to the section that leads you to that opinion that there is a curtailment once adopted, and I would be happy to address that.

Senator PELL. Well, as I understand it—and correct me if I am wrong, under the legislation once a Federal agency determines State and local enforcement procedures were equal to the Federal ones, then the Federal agency would leave monitoring and enforcement up to the States.

Mr. DAUB. I think you may be dealing with the provisions for audit in title 2—and, of course, that is a feature which has been quite often utilized now in some of the consolidations to block grant, where in fact if the State's audit procedures were equal to or superior to the Federal, those were waived—equal to or superior in terms of examination and reporting.

Senator PELL. Somewhat along the same line, but speaking to you as a Member of the Congress, which we both are, why do you believe the executive branch is better equipped and preferable to legislate changes in the laws governing Federal aid programs than we in the Congress?

Mr. DAUB. I appreciate your point of view, and where I take issue would be with the fact that this is perceived as a mechanism for legislation. I perceive it as a mechanism for structurally and procedurally getting both Houses to look rather carefully, with a microscope, at defined words that affect a program that is already in the law to which already have been promulgated many rules and regulations, and see this as the way by which that microscope can be focused in rather quickly and sensibly to alter the administrative rules and regulations that the executive then may be able to use to efficiently produce that program's result for its intended beneficiaries. I don't see it as taking away from either body, or the Congress, to which we both belong, that lawmaking prerogative. But to the extent that courts are supra-legislators and the regulatory branch is in fact a supra-lawmaking body, when the rules and regulations of our country quite often are enforced as if in fact they were the law—and they are not.

Senator PELL. I appreciate the objective that you have and the enthusiasm with which you support the legislation. I have not been as exposed to it as I might, but I would like to say to the chairman that I, for one, have certain reservations about this and would hope that you would consider it carefully before reporting it out—maybe take more than 60 days. [Laughter.]

The CHAIRMAN. We appreciate very much Representative Daub coming to the committee. I think that he has provided us with a certain insight, and I think he stated very clearly the goals that we

all support. We recognize there are problems, and the question is how we reach those goals.

I think it would be unusual if we were in quick agreement on this, because it is a very tough subject.

Mr. DAUB. I think it is indeed a turning of new ground and I do appreciate the seriousness of the language and how careful we should be in both Houses about its adoption.

The CHAIRMAN. I think we have to consider the implications not just for the programs that we may have in mind at the moment, but the implications for other programs that the ingenuity of our successors might bend to this procedure.

Mr. DAUB. I certainly understand that.

The CHAIRMAN. And so there is a good deal to consider.

Mr. DAUB. It is appreciated that you are expediting the matter of consideration in the Senate, and those of us who think that some kind of mechanism needs to be found certainly do appreciate that very, very much.

The CHAIRMAN. You have called the name of our friend, Sam Ervin. I think if he were here he would say that probably unanimous agreement on this subject would be as rare as hair on a frog's back. [Laughter.]

Mr. DAUB. Thank you very much.

The CHAIRMAN. Now, there is a vote in progress on the Senate floor, so we will take a 10-minute recess. And when I return, the witness will be Dr. E. Clark Ross.

[Brief recess.]

The CHAIRMAN. The committee will come to order. The next witness is Dr. Ross, and we will be glad to have you proceed.

STATEMENTS OF DR. E. CLARKE ROSS, D.P.A., DIRECTOR, GOVERNMENTAL ACTIVITIES OFFICE, UNITED CEREBRAL PALSY ASSOCIATIONS, INC.; FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, DEPARTMENT OF GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN; AND DR. BARBARA SMITH

Dr. ROSS. Thank you, Mr. Chairman. With me is Frederick J. Weintraub and Dr. Barbara Smith, of the Council for Exceptional Children. We have submitted our statement for the record. We won't read it.

The CHAIRMAN. It will be included in full in the record as if read.

Dr. ROSS. We are representing, Mr. Chairman, four national organizations: the Council for Exceptional Children, the United Cerebral Palsy Associations, the Association for Retarded Citizens, and the American Coalition of Citizens with Disabilities.

Three of these organizations are long-in-age organizations, the CEC dating from the twenties and the ARC and UCPA from the forties. We have been involved with and followed the history and evolution of Federal programs for the handicapped for quite a few decades.

S. 807 contains not only substantial constitutional questions, but we fear that the bill could result in the overnight dismantling of the critical Federal role in assisting handicapped people.

We have used one criterion in looking at the bill, and that is: Will the provisions of S. 807 assist persons with disabilities and

enhance their opportunities and services and benefits, or will they not? The way it is currently drafted we fear will not assist persons with disabilities.

I noticed Senator Pell started to ask questions to Representative Daub about block grants, and I would just like to refer the committee to page 13 of the Governmental Affairs Committee report accompanying S. 807 in which Edwin Harper, Deputy Director of the Office of Management and Budget, has been quoted as saying that if this bill is enacted, he sees the Reagan administration block grant proposals being much easier to obtain. Those proposals would have terminated all the direct service programs for handicapped Americans and that is why we are concerned about the bill.

The CHAIRMAN. Even under existing procedures, we only held on to them by a very narrow margin and with a lot of particular effort on the part of Senator Stafford, who was with us earlier, and Senator Weicker, so they almost were extinguished without this fast-track procedure.

Dr. Ross. That's correct, Senator. We would like to take just a minute to characterize the history of Federal programs for the handicapped and put it in the context of the title I, S. 807, provisions.

These programs have been decades in the making; they have been primarily initiated by Members of the Congress, based on a response to constituent, family, and individual needs. All Federal programs for the handicapped have a strong bipartisan history; they are not Democratic or Republican programs, but truly bipartisan. And most of them were enacted with very little opposition or dissent in the Congress. And, again, this is another reason we fear the fast-track provisions of S. 807. We prefer that the programmatic merits of these programs be debated on their own.

Like Senators Long and Stafford, we believe that the bill potentially alters the delicate balance of power between the legislative and the executive branches, and we are fearful that the future of handicapped programs will be in the hands of OMB, based on budgetary restraints, and not in the hands of Congress, based on the broader needs of constituents and the needs of handicapped people.

We have two primary concerns. One is the section that has been talked about earlier today, 1005 (c) through (f), the method of taking effect, and we have discussed that in our prepared statement at some length. We would also call to your attention the definition of "resolution" itself, which is 1001(5) of the bill. We believe that the Rules Committee has jurisdiction over the definition. And it is in the definition that the confusion of whether this is just a reorganization authority of the executive or whether it is a broader legislative authority to consolidate programs occurs.

Our major concern is with the nonamendability provisions of the bill—and this goes back to the definition of the resolution. Page 11 of the committee report clearly says that no amendments are allowed during the congressional consideration of the President's plan. There are some doubters on the congressional staff about that language, because you don't find it in the bill—so we would refer you to page 11 of the report.

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We would also like to make the point that every administration has the potential of occasionally making an error in legislative drafting, and without the amendment provision you could not even correct technical changes that could be quite substantial.

So we recommend that the bill clearly contain amendment authority, both in committee and on the floor. We are not comfortable just having it on the floor, because of the haste and confusion that sometimes occurs, last-minute kinds of arrangements, and we would prefer that the committee have the time to seriously consider and discuss and debate any amendments and changes.

The time lines have already been discussed by the previous Senators, and we would like to endorse their points of view. In our experience as interest groups trying to work on legislation we find that 60 days is frequently not adequate time to have hearings and to dialog with staff members and with Members of Congress when they return home. We feel that these programs are complex and they have a long history, and, as such, section 1005 (c) through (f) we believe should be deleted. We believe that Congress must maintain its constitutional jurisdiction over its legislative authority, particularly in the area of programs for the handicapped.

We have some other concerns with the bill which are not the immediate concern of this committee, and we won't read or take any time to discuss them—they are in our written statement. But we wish to highlight what they are. One is how the executive branch can certify compliance with Federal requirements; a second concern is with the waivering of single State agency requirements at the request of a State; the third provision is the transferability of up to 20 percent of funds from one program to the other; and the fourth is the repeal of maintenance of effort requirements without any substitute provision.

In conclusion, we believe that the constitutional sovereignty and authority of the Congress should be protected and, in doing so, we feel that programs for the handicapped requiring national and Federal Government attention would best be guaranteed.

We are available to answer any questions, if you have any.

The CHAIRMAN. You have really anticipated most of my questions, but let me ask you this question: What about the sunset provisions?

Dr. ROSS. Senator Long said he wasn't as concerned with sunset as enactment. I am not sure how sunset would take place, also the transitionary phase. A Presidential Plan would be enacted for 6 years; we would have no Public Law 94-142, education for all handicapped children, for 6 years. And then all of a sudden we would have it again.

It's a cumbersome provision.

The CHAIRMAN. It's a little uncertain. I agree with you that that is sort of a secondary concern, because if you get at all the other problems that are involved in the bill, I assume you can find a way to live with that one.

Dr. ROSS. We are in the role of trying to translate these laws to average citizens, parents, families, and disabled people across the country, and this provision would be particularly cumbersome to explain because a Federal program for the handicapped could disappear for 6 years and then I assume it might then automatically

start up again after a 6-year period, and the appropriations committees would be delighted to deal with this kind of mechanism.

The CHAIRMAN. Have you given any thought to what would happen if Congress shouldn't get around to a vote within 90 days? It's a little bit like the question what happens to a constitutional amendment if it isn't acted on within a period of time, particularly those that don't have a specific self-destruct mechanism within them; they are sort of out there in limbo after a period of time.

Dr. ROSS. I guess we are opposed and concerned about any procedure that becomes an up-or-down political vote of confidence in the administration and removes any of the programmatic kinds of discussions, and likewise any automatic feature that would occur. Legislators could respond to their constituents that even though they are concerned about these programs, procedures took precedence over a debate on programmatic merits, or a single up-and-down vote for or against a given party or a given administration took precedence over programmatic merits.

And that is the one thing that we are quite concerned about. We would like Members to debate the merits of programs and not have to interpret these votes as party loyalty tests one way or the other.

Mr. WEINTRAUB. If I could just take that a step further, Senator. I think we have had a history—I know in the 14 years that I have had an opportunity to work with the Congress on these matters, we have never had a situation when we were talking about a Democratic administration or a Republican administration, liberal or conservative, we have never had an administration that has been very supportive of issues pertaining to the handicapped. And part of the problem is that administrations tend to think in macroterms—how do we deal with the broad pictures. Handicapped children or handicapped adults are not the people who are in the broad picture.

The Congress has always been sensitive to that phenomenon.

What concerns us is when you get into things in which you have large reorganization plans, large consolidation plans, fast track, no amendment, and those types of things, inevitably the Congress is caught between what may on the one hand be a concern about a large picture, and may be a very reasonable situation, and as a result of that is forced to do serious damage and harm to those things that get lost in the shuffle.

Historically that has been our problem, as it has dealt with the handicapped. Every time the Government proposes a reorganization, one can look at its overall merits and say that's wonderful, but somehow the handicapped get thrown out: This little agency over here just doesn't fit into macroplanning.

I guess that is one of our great concerns about any time you try to, quote, simplify the system. As a result of simplifying the system the simplest of the people get hurt. And I guess that is what concerns us very much.

The CHAIRMAN. I think what you say is the thoughtful analysis, really, of this kind of effort.

The committee is very grateful to all of you for being here and for your statements, and we will look forward to continuing this communication as the Senate takes up the proposal.

Dr. ROSS. Thank you for your time.

The CHAIRMAN. Let me just say that if you get a clear sense of how this could impact in specific cases dealing with specific programs, it would be useful to have your further thoughts in that kind of detail before the Senate debate.

Mr. WEINTRAUB. We would be glad to.

Dr. ROSS. We can easily submit the White House block grant proposals, which would largely terminate all of the education and human services programs for the handicapped, and if you go back to the quote in the report by Mr. Harper of OMB, that is what they have in mind for their first agenda under title I. So I think we have a starting point.

The CHAIRMAN. Thank you, again.

[The following prepared statement and related material was received for the record:]

PREPARED STATEMENT OF DR. E. CLARKE ROSS, D.P.A., AND MR. FREDERICK J. WEINTRAUB, REPRESENTING THE COUNCIL FOR EXCEPTIONAL CHILDREN, UNITED CEREBRAL PALSY ASSOCIATIONS, INC., ASSOCIATION FOR RETARDED CITIZENS, AND AMERICAN COALITION OF CITIZENS WITH DISABILITIES

Thank you, Mr. Chairman, for allowing us the opportunity to present our comments and concerns relating to S. 807, the Federal Assistance Improvement Act of 1981. Mr. Chairman, we are here today representing millions of handicapped persons, and those who serve them. And, it is to the needs of the handicapped that we speak today.

We believe that as currently constructed, S. 807 paves the way for the eventual dismantling of the critical role the Federal government has played in the lives of the handicapped people of our Nation. Our organizations have long supported efforts for more efficient government and simplification of Federal support to State and local governments and programs. Thus, we endorse the objective of S. 807 to promote efficiency, and to streamline and simplify Federal assistance. However, we have always used as our criteria for such reforms the measure of "will this improve the lives of and programs for the handicapped?" It is this question we raise here today. Will S. 807 improve and assist the handicapped of our country? To date, Mr. Chairman, through our analysis of the probable impact of this bill, the answer is a resounding "No".

Mr. Chairman, the history of Federal programs on behalf of the handicapped has primarily been at the initiation of the Congress of the United States under opposition, or at a minimum resistance, by Federal administrations regardless of whether those administrations have been Republican or Democrat. The handicapped have always turned to the Congress on matters pertaining to rights, programs and administrative structure. It has been the process of the Congress, as well as the strong advocacy of its members, that has brought about the tremendous gains experienced by the handicapped over the past decades. S. 807 potentially alters the delicate balance of power between the Congress and the Administration by diminishing the authority and options of the committees of the Congress and placing in the hands of the Administration potential authority that could do great disservice to handicapped persons and all Americans.

TITLE I

Title I of S. 807 establishes the procedures by which Congress shall consider a Presidential proposal to consolidate Federal programs. It is our understanding that this Committee has jurisdiction to analyze and amend § 1005(c)-(f). These sections outline as "fast track" with stringent timelines, automatic discharge, and privilege motion provisions. We believe that the Committee has the additional jurisdiction to scrutinize the definitions of the terms used in this section. More specifically it is critical that this Committee study the impact of the definition of "resolution" because it is through this definition that Congress may well be abdicating its authority to amend the proposal to consolidate. We outline our specific concerns to these provisions as follows:

NONAMENDABILITY

The resolution, as defined, contains only those changes subsequently submitted by the President. In fact, the Committee Report (No. 97-136) clearly states on page 11

that "no amendments are in order during Congressional consideration of a plan." Mr. Chairman, is the intent of the Congress to give such sweeping authority to a President of the United States and to, in fact, place Congress in the reverse role of having only veto power? S. 807 proponents justify such authority by likening the legislation to which S. 807 refers to that of simple reorganization proposals. Mr. Chairman, the program consolidations governed by S. 807 are not the mere reordering of Federal offices and departments. Rather, S. 807 governs Congressionally-constructed Federal rights and programs targeted to particular recipients. These programs have been developed by Congress through careful review and must not be allowed to be repealed and dismantled without similar Congressional leadership. As you know, consolidating various programs that have different committee jurisdictions, different recipient needs, and different accountability, and matching provisions is a complex endeavor and one which must be done with a maximum amount of Congressional discretion. Thus, we urge that the definition of "resolution" and the question of whether a President's proposal is amendable be clarified and, if necessary, amended by this Committee.

FAST TRACK PROCEDURES

Our second concern relates to the 60 and 90 day timelines under which committees and Congress respectively must act on a consolidation plan as well as the automatic discharge provision. Title I requires that committees take action within 60 days of submission of the President's plan. If the committee has not been able to entertain public comment and complete its review and analysis of the implications of a complex consolidation plan within 60 days, it loses its jurisdiction and the plan is automatically discharged to the floor. Further action must be completed within the total 90 day timeline. Mr. Chairman, to hold the Congress hostage to such a timeline during consideration of a proposal that may be consolidating many programs over a vast array of departments, recipients and committee jurisdictions is unreasonable. The Senate has in place operating procedures which it may trigger if it feels there is a need to move a bill. It, for example, may vote to discharge from committee and limit debate. Is it the intent of Congress to vest more authority in the Executive Branch over the rules of the Congress than the Senate leadership has? Mr. Chairman, § 1005 (c)–(f) must be eliminated. The Congress must maintain its jurisdiction over legislative matters, particularly in the area of Federal rights, protections and assistance to those persons who have historically found their only recourse to equal opportunity to be the United States Congress.

TITLES III–VI

While this Committee has not been given the jurisdiction of provisions of S. 807 beyond Title I, we wish to raise a few issues and questions on S. 807, which further erode the authority of the Congress, for the record.

Title III

Title III gives the President the authority to designate a single agency to be responsible for coordinating the development and implementation of one or more requirements or rules that cut across agencies. Title III further establishes a procedure for certifying compliance by recipients. Once certified, the Federal government would be required to accept assurances without additional qualification. Certification can be awarded if State and local requirements are "comparable" or "at least equal" requirements. What will be the criteria for such a designation? What will be the due process for a challenge of the designation? Will there be opportunity for public consideration of the designation? What will be the effect of cross-cutting requirements and "National Policy Assistance Standards" on existing civil rights requirements such as Section 504 of the Rehabilitation Act?

Title IV

The Committee Report (No. 97-136) states that Title IV would allow a Federal agency to waive a "single state agency" provision upon request of the appropriate state official (page 37). Legislation for the handicapped has acknowledged the need for single state agency responsibility. The Education For All Handicapped Children Act (P.L. 94-142), for example, established the state education agency to be the sole responsible agency because of the historical problem of handicapped children being "bumped" from one agency to another for services. Does Congress intend to allow the Executive Branch to waive an existing statutory requirement simply upon the request of an undefined state official?

Title V

Title V allows federal recipients to prepare integrated program plans consolidating some categorical programs. Plans could shift up to 20 percent of the funds sought for any of the programs covered to others included in the plan. Should recipients be allowed to transfer funds originally targeted to a Congressionally-defined population?

Title VI

Title VI repeals existing maintenance-of-effort requirements and authorizes Congress to establish a standard maintenance-of-effort requirement. The Congress has concluded that differing programs require differing maintenance-of-effort provisions. If such a conclusion had not been reached, then a single provision would have been included in the General Education Provisions Act (GEPA), for example, which is the statute covering all education programs overseen by the Department of Education. A prescription for maintenance-of-effort for federal programs should properly only be arrived at after careful deliberation by the authorizing committees which have had experience with the workings of the programs, their weaknesses and strengths, and after their consultation with state and local education officials and others who are knowledgeable about the specifics involved. What will be the impact of a total repeal of maintenance-of-effort requirements without substituting new provisions? Is there a standard maintenance-of-effort requirement that could effectively be applied to the various and differing federal assistance program?

Mr. Chairman, we have very briefly covered our major concerns with S. 807, a bill with broad sweeping implications for the role of all branches of government and certainly for the handicapped of our Nation who currently benefit from federally-established rights, protections, and program assistance. We urge the Rules Committee to carefully review these implications and to make such adjustments as are needed to ensure our current representative government. We urge you on behalf of handicapped persons to protect the sovereignty of the operating procedures of the United States Congress which have enabled it to address the needs of our vulnerable populations. Thank you for this opportunity. Our organizations offer our informational resources to you and this Committee, should you need it in the future on this or any other matter pertaining to the handicapped.

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.,
Washington, D.C., November 5, 1981.

JOHN B. CHILDERS,
Deputy Staff Director, Senate Committee on Rules and Administration, Washington, D.C.

DEAR JOHN: At Monday's hearing Senator Mathias asked us to submit a "worst case scenario" if major federal/state programs were block granted. I understand Barbara Smith has given you a P.L. 94-142 education scenario. Attached is a possible scenario on the Developmental Disabilities program.

The Council of State Administrators of Vocational Rehabilitation is conducting their annual conference in Texas this week. There is no one in Washington to prepare a VR scenario and I would not wish to prepare one without CSAVR's approval. Let me know next week if you still have need of it.

Sincerely,

E. CLARKE ROSS, D.P.A.,
Director.

Attachment.

WORSE-CASE SCENARIO—DD IN A BLOCK GRANT

As states have been preparing for the consolidations that have already occurred as a result of the budget reconciliation process, several important issues have become clear which can be used to predict the impact of consolidations of other programs, including developmental disabilities.

1. State agencies are looking for ways to eliminate ancillary services and "buck" clients needing these services elsewhere. For example, Vocational Rehabilitation agencies in some states feel that, due to reduced funds, they must eliminate paying for certain kinds of medical services and thus are bucking clients in need to Medicaid or county health care services.

If DD were consolidated into a block grant, state agencies which had been convinced by the DD Council to serve the developmentally disabled will tend to transfer this group out again, without the Council to monitor and advocate. With the increased pressure to "purify" their caseloads and services and to respond to the

pressures of their own budget cuts, state agencies will have an easier time unloading clients without the DD program to monitor their activities.

2. Consolidation of planning entities and advisory entities has already begun to occur for programs which have been block granted. Were DD consolidated with other so-called social services, Planning Councils would likely be combined with other such planning and advisory bodies with varying mandates. If DD Councils were to survive and be incorporated with Councils with dissimilar mandates which did not include the monitoring of state government, the needs of the developmentally disabled would easily become lost to those of larger groups. Due to the relatively small size of the DD population compared to other populations in need, there would be a tendency to overlook the severity of DD needs in favor of larger numbers of other needy groups.

3. Lack of State DD mandate is the rule. Many DD Councils would disappear. Only 19 states have state legislation authorizing the DD Program and the Council. The remainder rely on the federal DD legislation. Since Councils have the responsibility to monitor state government vis-a-vis the DD population, no effective, organized voice for the severely disabled would exist in many states.

4. Transition from institutions to the community will slow down and, in many states, stop, while state institution and community residential staffs will be reduced. For those remaining, the quality of services will be compromised, the number of services related to client needs will be reduced, there will be an increase in the custodial aspects of residential services and an increase in the use of behavior controlling medications as a treatment modality. This is already beginning to occur in some states due to budget cuts. Without the DD program as a monitor of deinstitutionalization activities, there will be few checks on this trend.

5. As the monitoring and influencing capacity of the DD program disappeared, DD individuals will be transferred out of many programs, increasing individual and family indifference and causing a greater reliance on welfare, entitlement and cash assistance programs.

6. With the repeal of the DD Act, the Bill of Rights would be repealed, as would the mandate for Individualized Habilitation Plans.

7. Loss of the mandate for the Developmental Disabilities Planning Council will affect the following areas:

Coordination and influencing of the generic service system and a disappearance of any entity with the capability to translate the new system of block grants and state government reorganization of services to the DD client.

The influencing of state legislation with regard to the needs of the developmentally disabled will be removed.

The influencing of administrative procedures which discriminate against or exclude DD people will be lost.

Demonstration and innovation projects which fill gaps in services and/or provide specialized services otherwise unavailable in states will disappear as consolidation frees those funds for other, undesignated uses.

The lack of a mandate for a state plan will effectively hide the uses to which funds previously targeted to the developmentally disabled are put.

Loss of data gathering capability for the DD population.

Loss of monitoring and evaluations of services capability.

Loss of the Council as an advisory body to the governor on policies affecting the severely handicapped.

Loss of a state-wide planning capability which incorporates all the key actors in each state.

Loss of expertise through staff attrition and reductions in force.

8. Loss of the Protection and Advocacy System will eliminate the capability to act on cases of neglected, abused and mis-served DD clients.

9. Loss of UAF's will result in the elimination of a focus for specialized early detection programs in DD.

Loss of an evaluation capability for DD in early childhood by specially trained professionals.

Loss of parent training; loss of training of specialized professionals and paraprofessionals; and loss of research capability in prevention and treatment.

If combined with other OHDS discretionary funds, the focus for developmental disabilities knowledge will disappear. This population has needs which differ greatly from other populations under the jurisdiction of the Office of Human Developmental Services.

10. Loss of special projects authority will eliminate the focus on the effectiveness of programs which serve the developmentally disabled: Will eliminate the focus for

future directions in prevention and treatment; will preclude the generation of new knowledge, its coordination and dissemination.

Developmental Disabilities Assistance and Bill of Rights Act

BASIC STATE GRANT

The Basic State Grant program provides annual allotments to states ranging from $250,000 (for 13 states) to $3 million (for two states) based on a formula matched by the states.

The Developmental Disabilities Act requires that 65 percent of a state's grant be used in support of service activities. It is from this percentage that gap-filling and demonstration projects are funded. As cut backs in other health and human services (as well as entitlement) programs are implemented in the states, developmentally disabled people will experience a reduction in services from the generic service system, thus creating more gaps to be filled by Developmental Disabilities Basic State Grant funds, particularly in the arena of serving people in their own communities.

Secondly, since developmentally disabled people require a coordinated sequence and combination of services, the case management services provided by Developmental Disabilities funds are keenly necessary. These services will be curtailed by any cut in the basic state grant, producing, now as in the not-too-distant past, fragmentation of service delivery and the loss of human potential of individuals who fall through the cracks.

Third, a reduction in service dollars will contribute to an increase in institutionalization. As a coordinative and capacity-building program, Developmental Disabilities will have to plan for and cope with cuts in other crucial programs which assist people with developmental disabilities. We are seeing a reversal in the federal government's willingness to encourage independence for the severely handicapped and the DD program will have to bear this additional burden to stave off a return to institutionalization of our citizens with disabilities.

The remaining 35 percent of the Basic State Grant is used to support activities of the Developmental Disabilities Planning Council and to administer the state program. A 10 percent cut will necessitate a reduction in Council's public education efforts; data-gathering activities, so vital to policy-development on the state level; a reduction in Council staff to support Council members as they monitor, evaluate, coordinate and plan for services in each state. A reduction will decrease funds available to administer the program and to perform grants management and monitoring activities. A cut will limit the capacity of the DD Council to convene in order to fulfill their legal mandate.

For the last four years, the Basic State Grant program has remained at the same level of appropriation, having to adjust to inflation and increased costs of mandated activities without additional funds. Level funding represents a real decrease of at least 12 percent, just in the last year, and close to a 25 percent reduction since 1978. In addition, each state's match may be proportionally reduced, providing fewer total dollars to serve this vulnerable population.

A reduction in the Basic State Grant is unconscionable. Even with a desire on the part of state government to serve this population, there will be so many financial strains on states that developmentally disabled people will invariably lose. To cut a program that has state-wide planning responsibilities at a time when the entire organization of state services is being altered due to block grants and budget cuts, is to deliberately and cruelly say to people with developmental disabilities "Not only are we going to deprive you of basic services, we are also going to paralyze your capability to make sense out of what does remain available to you and prevent specialized services from addressing your needs."

UNIVERSITY AFFILIATED FACILITIES

Thirty-six UAFs and five satellities are now funded under the DD Act. These programs serve 66,000 severely developmentally disabled children who, for the most part, are referred to UAFs for tertiary (not available elsewhere) treatment and diagnosis. For such cases, UAFs represent the service source of last resort. The satellites bring services to rural and other unserved areas (e.g., Navajo Nation, rural Montana, Vermont and Hawaii). UAFs also provide specialized training to professionals who serve the developmentally disabled. For example, UAFs provided nationwide assistance to state and local education agencies in the development of educational plans for developmentally disabled children, developed training plans and trained Head Start programs in methods necessary to include developmentally

disabled children in Head Start classes. An estimated 77,000 professional leaders were trained by UAFs in 1981.

This training promotes primary, and secondary, prevention of disabilities and makes possible the placement of disabled individuals in public programs and community settings.

A 10 percent cut in UAFs would eliminate services to 6,400 disabled children who were unable to find services elsewhere, yield 7,700 fewer trained leaders, and increase federal and state welfare and support program costs by 32 million dollars per year (increased safety net costs due to lack of primary and secondary prevention—reduced capacity to care for disabled in communities—public schools, Head Start, etc.). Too limited training has been the public's greatest criticism of 94–142.

PROTECTION AND ADVOCACY

During the last 5 years, demand for Protection and Advocacy services has steadily increased to the point where 30,000 people received them in 1981. A 10 percent cut in resources for these services, coupled with the drain on them made by inflation, will mean 120 less staff people to meet these needs and a loss of the capacity to serve 5,600 people in 1982.

This comes at a time when cuts in other services to persons with disabilities are increasing demands for advocacy dramatically. Most Protection and Advocacy systems are reporting a 10 percent increase in case loads in the last month as service providers cut back in anticipation of reduced funding. Even before the Administration's proposals go into effect, schools are reducing special education services, state mental retardation agencies are cutting back on community programs, deinstitutionalization, and training of direct care staff in institutions. The institutional abuse and neglect which gave rise to Protection and Advocacy systems can be expected to increase dramatically.

The $750,000 saved by cutting this program will not balance the federal budget. It will remove the last support from thousands of persons with developmental disabilities and their families, made desperate by cutbacks and dislocations in an already inadequate service system.

SPECIAL PROJECTS

Grants of National Significance and Special Projects aided the Developmental Disabilities Program to stay on the cutting edge in developing new services and combinations of services for individuals who are developmentally disabled. In the years of adequate funding of Section 145 projects, such as fiscal year 1978, Grants of National Significance and Special Projects brought together the vast resources of the University Affiliated Facilities, the creativity of private organizations, and the vast experience of State Agencies in designing and developing new and varied service models for individuals who are developmentally disabled. This same funding source also provided the resources necessary for technical assistance to deliver these new service models to the Developmental Disabilities Program at the State and local level.

In fiscal year 1980 and fiscal year 1981, the Grants of National Significance and Special Projects have been grossly underfunded and the cutting edge has been left dull so that innovation and adaption of service modalities for our most severely handicapped population are not being done.

If we accept the fact that the developmentally disabled are included in the "truly needy" population of which the President speaks, and if we accept the fact that Special Projects in the developmental disabilities legislation is a necessary part of the program, then an additional 10 percent cut in the Special Projects funds would constitute a devastation to the already devastated activity of the program.

In the last four years, Special Projects has been cut from $19,567,000 in 1978 to the present level of $3.4 million. It has been announced by the Administration that the $1.75 million rescission came out of the Special Projects monies in fiscal year 1981. This has been the justification for the Administration not funding many of the necessary projects to keep the nation, Congress, and the Administration informed as to the effectiveness of the developmental disabilities program and its activities such as the WESPO project, the UAF DATA Base Project, and the Standards for Care Homes projects.

An additional 10 percent cut and the fact that the Administration uses the funds from Special Projects and to show austerity lessens the impact of Special Projects to generate cost effective sharing of information, informing Congress of the work of the program, and enabling the developmentally disabled to profit from services and programs provided to similar groups in other states.

The Special Projects component of the Developmental Disabilities Program has experienced deep cuts throughout the last three years. This component of the program was formerly the second largest funded part of the program. Now it is the smallest, and an additional reduction just continues to cripple the ability of the program to design cost effective model programs for the developmentally disabled and to provide reports and information about the program on a national basis to the Administration and to Congress.

When the information line to the developmentally disabled is severed, then it is impossible for an uninterested Administration and an unaware Congress to hear the cries and understand the needs of the developmentally disabled in our country.

The Probable Effects of S. 807 on the Education for All Handicapped Children Act

The Education For All Handicapped Children Act, Public Law 94-142, as passed by Congress in 1975, affirms a right to an education for handicapped children. Prior to the passage of Public Law 94-142, millions of handicapped children were excluded from public school participation. Today, states and advocates report that nearly all, and in some cases possibly all, handicapped children are receiving some form of educational services.

A goal of S. 807 is to establish a "fast track" legislative procedure for Congressional consideration of Presidential proposals to consolidate federal programs. The Report accompanying S. 807 states that this procedure would be used to accomplish the block grants submitted in the spring of 1981 by the Reagan Administration—one being S. 1103, an education block grant that would have repealed The Education For All Handicapped Children Act (P.L. 94-142), education programs for disadvantaged children, school desegregation programs, adult education programs, and over 40 other federal education programs. The Congress in its wisdom, through hearings, debate and constituent input, exercised its legislative prerogative to carve and construct an education consolidation plan that, among other things, does not pit handicapped and disadvantaged children against one another for scarce resources, nor did Congress deem it wise to repeal the handicapped education programs.

If S. 807 had been in place in the spring of 1981, the following scenario may very likely have happened: S. 1103 offered; within 60 days, a decision would have had to have been rendered regarding Committee jurisdiction; and the Committee would have had to complete its review, and unless the Committee voted an outright disapproval of the President's education plan in order to stop it, a bill would have gone to the floor which repealed Public Law 94-142 and consolidated the monies, because no amending would have been allowed.

Informal negotiations between the Administration and the Committee could have been taking place, however, the final decision by the Administration may not have been communicated to the Committee until the 59th day of the 60 day jurisdiction period; the bill would either be automatically discharged after 60 days or reported by the Committee; and members of the Senate would have been forced to either wholly approve or disapprove the President's education block grant, while most of them would not have wanted to repeal The Education For All Handicapped Children Act. However, no amendments to save the program would have been in order.

Effects of Repeal of Public Law 94-142

Without Public Law 94-142, there is no federal statutory "minimum floor" of educational rights for handicapped children.

After S. 1103 had been submitted, bills were offered in several state legislatures to repeal state right-to-education laws.

Without state and federal provisions establishing rights and procedures for providing educational programs to handicapped children, parents and advocates across the Nation would find themselves back in court. It would mean a rerun of past history: After a few years of litigative chaos, practically every interest group would be back asking Congress for a revival of the federal "minimum floor" of compliance.

The loss of a specific earmark of federal money for education of handicapped children would tell the states at a time of scarce resources that Congress is no longer committed to helping to meet the costs of the educational needs of handicapped children.

Many programs for handicapped children would be trimmed, children would be placed back in institutions rather than receiving services in their community, and some children may even lose their right to go to school.

[EXCERPT FROM EDUCATION DAILY, NOV. 3, 1981]

BLOCK GRANTS CREATE POLITICAL FUROR, SAY ADMINISTRATORS

State and local administrators gearing up to run the new education block grant are discovering that the consolidation may not be as easy to run as they first thought.

"Never before has an education program been so political," said Bud Grossner, an assistant superintendent of the Illinois State Board of Education. "I've been involved with federal programs at the state level for 10 years, but the politics of this one are different." Grossner spoke yesterday to 150 federal program coordinators meeting in Washington, D.C., at a National School Boards Association conference.

"The consolidation act has become a political football," said Grossner. "The governor thinks he has the power because he appoints the advisory committee, the state education agency says they have power over the block grant and the state legislature wants to reappropriate all federal money," he said.

Conflicts emerge.—Already, he said, the governor's office is working on formulas to distribute the block grant money, the legislature is trying to stop the governor from doing that, and the state education agency is drawing up its own formula. All of this, he said, is "confusing a lot of issues." Illinois stands to get up to $27 million of the $589 million education block grant for the 1982-83 school year.

Congress earlier this year created a block grant that merged 28 small education programs into one. Under the law, state education agencies will oversee the block grant but will pass on 80 percent of the dollars they receive to school districts.

While the block grant was an effort by the federal government to deregulate education programs, state administrators say the government's reluctance to issue regulations for the block grant has posed a problem.

"They've given us instead nonstatute regulations and nonbinding guidelines, but our concern is about what will happen three years down the road when auditors come and look for budget exceptions," Grossner said. "We've got questions on implementing the block grant, and federal officials are saying 'you can interpret the legislation as well as we can' " he said. "That could lead to problems."

Shared problems.—Joe Webb, special assistant to the superintendent of public instruction in North Carolina, told the group he had hoped to come to the NSBA meeting "to find out that North Carolina's experience with implementing the block grant was unique. But now I think every state is having problems."

"I've never seen such total concern, such a power struggle in my 22 years in education, as I have with the block grant," said Webb.

The maximum grant for North Carolina would be $13.5 million, if the block grant was appropriated its full $589 million authorization, Webb said, but if Congress goes along with the House recommendation of $535 million, the state's grant would drop to $12 million, he said.

North Carolina is in a peculiar situation, he said, since the state legislature has given itself control of all federal block grants—including education. That flies in the face of federal law, which gives authority over block grants to the state education agency, Webb said, "Our question now is, how do we comply with both the state and federal laws at the same time?" he asked.

Webb said he was grateful for Congress decision to direct 80 percent of each state's block grant directly to school districts. "That's probably the only money that will get to the students," he said.

The CHAIRMAN. Our next witnesses are Dr. David W. Hornbeck, who is superintendent of schools of the State of Maryland, and Mr. Roger Tilles, of the National Council of Chief State School Officers. I believe Dr. Hornbeck will speak on behalf of the National Council of Chief State School Officers.

It is a personal pleasure for the Chair to welcome Dr. Hornbeck here.

STATEMENT OF DR. DAVID W. HORNBECK, STATE SUPERINTENDENT OF SCHOOLS, STATE OF MARYLAND, REPRESENTING THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Dr. HORNBECK. Thank you, Senator.

It is my pleasure to be here representing the Council of Chief State School Officers, and we welcome the opportunity to offer testimony on S. 807. In fact, it is rather unusual for the council, which is made up, as you know, of the highest ranking education

officials from every State, to comment on a question of a procedural matter of congressional administrative policy. However, in this instance, we believe that this bill goes to the heart of Federal education programs and that its proposed procedures will have drastic ramifications for substantive policy and programs in State and local jurisdictions.

It has been characterized, of course, as a means simply to accomplish straightforward administrative reorganization. We have been using the term, "fast-tracking" this afternoon. But we believe that S. 807 governs much more than such an administrative plan.

This bill, in fact, provides mechanisms to repeal and totally restructure existing Federal assistance legislation. Every current Federal program of educational assistance could be subject to broad changes in a consolidation and simplification plan that would be covered by this bill's procedures.

The Education Consolidation Improvement Act of 1981 offers an example of the kind of program consolidation that would be covered here. Indeed, the only restriction as I read it in S. 807 is that the Presidential plan proposes consolidation of "functionally related programs" and that can be, of course, within the functionally related character of the budget which, for education, means virtually everything in that particular context.

We applaud the efforts to make meaningful consolidation plans with a large number of education and other programs that have grown up over the past years, but our concern and our wariness grows out of the lack of hearings or measured consideration as one proceeds down that line.

Important questions remain, for example, regarding the consolidation in chapter 2 of the Consolidation Act of 1981, that could and, we believe should, have been resolved within a traditional legislative deliberative process. The fact is that many important changes will result in education programs which have been in effect for over a decade without even a hint of consideration that the drastic, substantive changes in these programs merited. And we do not believe that what are in effect substantive changes in programs should be made via a fast-track process intended to be used for speedy administrative reorganizations.

I am struck by the testimony of those who immediately preceded me with respect to programs for handicapped youngsters. The fact is that due to Federal education policy and the commitment of States like Maryland, that in an unprecedented way in the history of the world, we have taken literally thousands of handicapped youngsters out from under the proverbial staircase, and we have extended hope. We have extended expectation. Here, through what is characterized as administrative policy, it is at least possible to conceive that we will put many of those same children back under that staircase. I might make the same comment potentially as it relates to poor children who are served by title I. You asked a moment ago for a specific example of what might transpire. It is not entirely farfetched, since it could have been contemplated by the bloc grant proposal of the President made previously, that you could block title I and handicapped money, put them together, reduce the funds, give local school systems the responsibility for making those decisions, and you literally would create the situation

in which poor children and handicapped children would be at each other's throats. In the process we would tear at the fiber of what holds some communities and towns and cities, certainly in our State, together. That is not an entirely farfetched possibility.

With these kinds of things in mind, we would like to offer to the Rules Committee some specific reservations, not unlike some of those that have been made previously.

Under title I, it appears that the traditional legislative duties and powers of the authorization committees are substantially relinquished to the executive branch. Included within—I do not know quite how to characterize it, other than this emasculation of authorization of committee powers—are: The authorizing committee may not amend the President's proposal. While the committee must relinquish its authority to amend, the President can amend his plan at any point during the authorizing committee consideration; and the committee is limited to 60 days for complete consideration, including hearings, the taking of public testimony, subcommittee and full committee markups, and is forced to take action within 60 days, or the proposal is automatically discharged.

I could not help but be struck as I read the legislation itself—one can say, "Well, it would never happen"—but if I read it right, it seems to me that a proposal could be put before the Congress, assigned to the principal committee; the 60 days could start to run; after 35 days or 55 days or 59 days, the plan could be amended; the 60 days would not start to run again. It is still the original 60 days, and with 1-day consideration of any amendments of that character, it spits out on the floor. And somehow, the deliberative kinds of actions that have taken place, whether one is talking about title I or handicapped education or programs as Senator Pell referred to a while ago, like metric education, any one of those deserve a kind of deliberation, consideration and thoughtfulness that goes beyond that.

The motion to consider, as has previously been pointed out, is highly privileged, not debatable, not amendable, not subject to postponement or a motion to reconsider, and the plan cannot be amended on the floor. And working out the timetable, it appears that the authorizing committee of secondary jurisdiction can have as little as one day to request review of the proposal, with all of this having to take place within 90 days. In addition to those factors, it appears that it is quite possible to envision any major consolidation proposal as taking place in several program areas with overlapping committee jurisdiction, thus necessitating considerable debate even in terms of which committee to assign it to in the original instance.

So for all of these reasons, we ask your most careful deliberation, as I am sure that you will give to what would be far-reaching changes.

As with the previous group of persons who testified, while it is not the object of this particular hearing, let me say that the Council of Chief State School Officers share many of the concerns about other titles within the bill, including the issue of comparable or at least equal to Federal standards in receiving permanent certification, the kinds of issues that are raised with regard to existing labor practices, equal employment opportunity, environment, civil

rights, and other existing assurances that are required by recipients of Federal assistance and so on. Those factors are addressed in the brief statement that I have supplied to the committee on behalf of the Council of Chief State School Officers, and I do appreciate very much this opportunity to share our thoughts with you.

The CHAIRMAN. Dr. Hornbeck, there has been some general discussion of the 60-day time frame which is provided in the bill. You are uniquely, I think, equipped to give us a practical opinion on how that would work out. Now, wearing either one of your two hats under which you appear today, either State superintendent in Maryland, or representing the National Council of State School Officers, suppose such a consolidation plan were to be transmitted by the White House to the Congress. How long does it usually take to take a sounding around the country on this bill? Now, you are in a fairly fortunate position as far as your geographic location is concerned, and you might be able to get early notice of such a plan as State superintendent of Maryland, but even in that position, you would have to check with county superintendents and with others involved in the State school system for basic information, but what about the National Council? What sort of time frame do they have for deciding whether a program of this sort is good or bad, or whether it ought to be supported or opposed, whether it ought to be an effort made to go to the White House to urge some alteration, some modification, or whether the decision is simply to come to the Congress and hope to get the whole thing knocked in the head. What sort of time is involved in getting the people who are going to be immediately affected organized to present a comprehensive and a considered opinion?

Dr. HORNBECK. In the case of the Council of Chief State School Officers, of course, we represent each of the 50 States plus the territories. And the prospect of even pretending to thoughtfulness within a 60-day period of time, given that range of responsibility and some responsibility on the part of each of us to deliberate on the issues prior to taking a full position before the Congress, there is just no way that that could be done in a 60-day period.

Now, one might argue that that is the reason you have executive committees, and indeed, we do have an executive board with the Council of Chief State School Officers, and serving on that are 9 or 10 of my very able colleagues from across the country. But if pressed, they can come up with what they think, but to pretend that that reflects the point of view of the 50 of us really is farfetched.

I think, for example, just within Maryland—I do not even have to get to the Council of Chief State School Officers to reflect much of the difficulty—in Maryland, we have the unique or unusual situation of having only 24 school systems because we are organized on a county basis, and as a consequence, it is a little bit easier for me to consult with the 24 superintendents and the 24 local boards of education and people who are interested in whatever program it happens to be. But even within that context, it is terribly difficult to consult with and come to a deliberative decision regarding any particular given issue, and I think again of issues like those involving education of handicapped kids and title I kids or vocational education kids, bilingual youngsters—a whole series

of issues where there are positions and programs that I think have been relatively well crafted, in some instances over decades, here in the Congress, and for me to give you or any given chief State school officer an off-the-top-of-their-head, "Yes, I think that is good," or "No, I think that is bad," sort of answer is to do injustice to the literally thousands of schoolkids that would be affected, substantively—not procedurally, but substantively—by these kinds of changes.

So I think that it is fair to say that in our view, the 60 days is wholly inadequate, just for the educational community, to make that kind of an informed comment.

The CHAIRMAN. Let alone for transmitting that in an orderly way to the Congress and having it challenged here and having to be corroborated or contradicted, as the case may be.

Dr. HORNBECK. That is correct, sir.

The CHAIRMAN. What reservations do you have about what would be called in the House a closed rule, the inability to provide any kind of congressional amendment?

Dr. HORNBECK. Well, I think that that is one of the serious defects of the proposal. The democratic process, I recognize as being messy now and again. On the other hand, it strikes me that it is the best system of government that humankind has ever devised, and part of that process, it has always appeared to me, is that persons within the legislative halls, not only may but have the obligation to debate proposals of substance, and in the course of that debate, fashion or craft wiser solutions than might come from any single source. To automatically for every program, for all time, that might arise under this kind of legislation to shut that off, simply, it seems to me, does grave injustice to that process of democracy and what the legislative branch of our Government, whether at the Federal, State, or local level is all about.

The CHAIRMAN. Well, I think that is something that the Rules Committee should consider very carefully in making its recommendations on this bill.

We are very grateful to you for being here and for your testimony, Dr. Hornbeck. Thank you, sir. Good to have seen you.

[The following prepared statement was received for the record:]

PREPARED STATEMENT OF DR. DAVID W. HORNBECK, STATE SUPERINTENDENT OF SCHOOLS, STATE OF MARYLAND, REPRESENTING THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

The Council of Chief State School Officers welcomes the opportunity to offer testimony to the Senate Rules Committee on S. 807, the Federal Assistance Improvement Act of 1981. It is unusual for the Council, made up of the highest ranking Education officials from every state, to comment on or question a procedural matter of Congressional administrative policy. However, we believe this bill goes to the heart of federal education programs and that its proposed procedures will have drastic ramifications for substantive education policy and programs in state and local jurisdictions.

S. 807 has been described as a means to accomplish straightforward administrative reorganization, sometimes referred to as fast-tracking. However, we believe that S. 807 governs much more than such an administrative plan. This bill provides mechanisms to repeal and totally restructure existing federal assistance legislation. Programs which are covered by the potential consolidations envisioned by this bill's procedures, have been crafted by the Congress over many years with careful consideration of complex concerns. Every current federal program of educational assistance could be subject to broad changes in a consolidation and simplification plan that would be covered by this bill's procedures.

The Education Consolidation and Improvement Act of 1981 offers an example of the type of federal assistance program consolidation and simplification that would be covered under S. 807. Indeed, the only restriction in S. 807 is that the Presidential plan proposes consolidation of "functionally related programs." While we applaud the efforts to make meaningful consolidation plans for the large number of education and other programs that have grown up over the past years, the lack of hearings or measured consideration in the history of this existing consolidation (as it was added as part of the Budget Reconciliation process), makes us extremely wary of the quick consideration timetables and procedures that are outlined in S. 807. Important questions regarding the present education consolidation in Chapter 2 of the Education Consolidation and Improvement Act of 1981 and of the "simplification" of the old Title I program now known as Chapter I still remain that could and should have been resolved within a traditional legislative deliberative process. Many important changes were made in education programs in effect for over a decade, without even a hint of consideration that the drastic substantive changes in these programs merited. We do not believe that substantive changes in programs should be made via a fast track process intended to be used for speedy administrative reorganizations.

With this in mind, we would like to offer to the Rules Committee several specific reservations we have regarding S. 807:

Under Title I, it appears that the traditional legislative duties and powers of the authorization committees are substantially relinquished to the executive branch. Included within this emasculation of authorization committee powers are:

1. The authorizing committee may not amend (it can only "recommend" changes in) a president's proposal to consolidate functionally related programs. (Section 1001(5), line 21-22; Section 1005(d)(2).)

2. The authorizing committee must relinquish its authority to amend a plan but the President can amend his plan at any point during the authorizing committee consideration. (Sec. 1002(e).)

3. The authorizing committee is limited to 60 days for complete consideration, including hearings, the taking of public testimony, subcommittee and full committee markups. (Sec. 1005(d)(2) line 6.)

4. The authorizing committee is forced to take action within 60 days or the President's proposal is automatically discharged to the Senate floor for a vote. (Sec. 1005(d)(2), lines 7-8.)

5. The motion to consider is highly privileged, i.e., not debatable, not amendable, not subject to postponement or a motion to reconsider. The plan cannot be amended on the floor. Since the bill cannot be amended as sent from the President, there will be no differences between the House and Senate, thus, no need for House-Senate Conference. (Sec. 1005(e) lines 10-16.)

6. An authorizing committee of secondary jurisdiction has only one day to request review of the proposal. (Sec. 1005(d)(3).)

7. All of the above have to take place within 90 days of continuous session from the day that the President submits his plan. (Sec. 1005(a).)

In addition to the problems raised for the authorizing committee by this fast track, a major consideration remains in Title I. Since consolidations would obstensibly take place in several program areas with overlapping committee jurisdiction, determination of which is the primary and secondary committees will have crucial importance, as the former would have 60 days and the latter only one day to consider the proposal. In short, the "fast-track" provisions of S. 807 strike us as too hasty—far reaching administrative change which affect programs must be subject to debate and careful consideration.

Even though we understand this hearing is to cover only Title I of S. 807, we feel that additional questions regarding the other Titles of this bill need to be asked. Many might have severe consequences for education assistance programs:

TITLE II.—FINANCIAL MANAGEMENT AND AUDIT OF FEDERAL ASSISTANCE PROGRAMS

Will the new auditing procedures actually result in more federal intrusion by federal auditing agencies such as the General Accounting Office?

Will the provision for reimbursement of audit expenses carried out on behalf of the Federal government ever actually be funded given the current trend in cutting federal spending?

TITLE III.—ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

What will be the criteria for designating a policy for "comparable" or "at least equal to" federal standards for permanent certification of compliance?

What process would allow for challenging the designation?

Are the so-called "nationally policy assistance standards" going to render invalid existing labor practice, equal employment opportunity, environment, civil rights and other existing assurances required by recipients of federal assistance?

Is there ample provision for public comment and due process during the consideration of proposed new regulatory and standard setting procedures?

TITLE IV.—JOINT FUNDING SIMPLIFICATION ACT AMENDMENTS

Is it the intent of Congress to allow federal agencies to waive Congressionally-mandated single state agency requirements as stated in the Committee Report (97-136)?

TITLE V.—INTEGRATED ASSISTANCE—PROCEDURES FOR THE INTEGRATED PROGRAM PLANS

Does the Congress intend to relinquish its power to decide where federal funds are to be directed by allowing a blanket 20 percent transfer among previous targeted programs?

TITLE VI

It is wise to repeal all existing maintenance of effort provisions without substituting any alternative safeguards?

The CHAIRMAN. Our final witness today will be Ms. Ellen Hoffman, director of the governmental affairs of the Children's Defense Fund, and Mr. Decker Anstrom, a consultant.

It is my understanding that you will speak not only for the Children's Defense Fund, but for a number of organizations, all of which will be included in the record.

STATEMENT OF MS. ELLEN HOFFMAN, DIRECTOR, GOVERNMENT AFFAIRS, CHILDREN'S DEFENSE FUND, AND DECKER ANSTROM, CONSULTANT

Mr. ANSTROM. I would like to just briefly summarize our position.

The CHAIRMAN. Let me first direct that your statement be included in the record in full, as if it had all been read.

Mr. ANSTROM. Thank you.

The CHAIRMAN. And then let me say that unfortunately, those bells mean that there is another vote on the Senate floor so if we can conclude rather briefly, then I will not have to ask you to hold while I go over and vote.

Mr. ANSTROM. All right.

As the introduction to our testimony does point out, Mr. Chairman, we appreciate the opportunity to appear before you today. We represent a broad range of interests—housing, food, civil rights, employment, education, health, rights of disabled citizens, the elderly, and children.

In summary, we have very serious problems with this piece of legislation. Earlier witnesses this afternoon, I think, have covered many of the points and concerns that the organizations that we represent today have.

Basically, we simply want to state that many of the portions of S. 807 which have not been referred directly to you would be extremely destructive and disorienting to the Federal, State, local partnership. We hope that in your role as chairman of this committee and as a Member of the Senate that you will examine these provisions in depth and request the leadership to postpone any full Senate action on the bill until the issues have been fully aired and the problems alleviated.

In our testimony we review the whole history of the Federal assistance role, which we think has been a very constructive one, one that has been deliberately built over a number of decades, and we are quite concerned about the sweeping authority that this legislation would give to, in a single plan, without enough time, as other witnesses have demonstrated, to consider it, to simply repeal all the work that earlier Congresses have done.

There are several specific points on title I that we would like to simply bring to the committee's attention, which we identify on page 6.

First, we think the extremely broad definition of "functionally related" would allow Congress to consolidate all of the program within a budget within one fast-track action is very ill-conceived. As we point out, in a function like function 500, some $30 billion worth of programs could be revamped in one fast, simplistic decision on the "fast track."

We also think that allowing all programs in a consolidation to be administered according to the terms and conditions of any one of those could create a classic situation of the tail wagging the dog. You asked for an example earlier, and for example, we ask the question: Should we jump so quickly to propose that funds for child welfare services to homeless children be distributed under what had previously been a CETA formula? Obviously, this does not make much sense.

Another concern is that a proposed consolidation plan would have to contain an analysis of the potential costs of administration and implementation, but there is no requirement for a comparable assessment of the benefits.

Fourth, we are worried that the only way that a consolidation plan could be amended is through a Presidential decision to request a modification.

And finally, we feel that the 90-day time limit is too short for adequate consideration.

I'd like to mention three specific points about the sections referred to this committee. First, we think that the lack of definition of "committee of primary jurisdiction" is of concern and needs to be looked at.

Second, it is not clear——

The CHAIRMAN. Yes, and I can envision all kinds of problems flowing from that.

Mr. ANSTROM. Indeed. For example, if the social services bloc grant, of the nature that the administration proposed earlier this year, was put forward, who would have primary jurisdiction—the Senate Finance Committee or the Senate Labor and Human Resources Committee? That question obviously is up for grabs in this legislation.

Second, it is not clear whether all committees with jurisdiction over programs in a consolidation would have a chance to review it, or if this privilege falls only to two committees, as the legislation seems to suggest now.

And finally, we are concerned, as others have been, about the fact of lack of amendability in both the committee and on the floor.

We have numerous other concerns about the legislation that the testimony identifies.

Again, I think we simply want to thank you, Mr. Chairman, for the time you have given to this issue this afternoon. It is not on the surface a particularly appealing one, but it has far-ranging ramifications, and we are grateful for your attention.

The CHAIRMAN. Well, I am grateful for your being here and for the time that you have spent in preparing this statement, which the committee will consider very carefully.

I think that you have accurately described the situation. It is not a particularly dramatic issue at this moment, but it could have enormous impact on the activities of the Congress in the future and on the welfare of people who are impacted by these programs.

It is really hard to look into the future and see exactly what effect this might have, so I think we have to proceed with great caution, and we will do that better armed because of your participation here today.

Thank you both very much for being here.

[The following prepared statement was received for the record:]

PREPARED STATEMENT OF MS. ELLEN HOFFMAN, DIRECTOR, GOVERNMENT AFFAIRS, CHILDREN'S DEFENSE FUND, AND MR. DECKER ANSTROM, CONSULTANT

Representing—American Association of University Women; American Council of the Blind; American Friends Service Committee; Association of Community Organizations for Reform Now; Center for Community Change; Child Welfare League of America, Inc; Children's Defense Fund; Consumer Coalition for Health; Family Service Association of America; Food Assistance Project; Food Research and Action Committee; Friends Committee for National Legislation.

Jobs Roundtable; National Alliance for Optional Parenthood; National Congress of Neighborhood Women; National Council of Catholic Charities; National Council of Jewish Women; National Council of LA RAZA; National Employment Law Project; National Urban League; Neighborhood Coalition; Services Employees International Union; Wider Opportunities for Women, Inc.; Women's Equity Action League.

Mr. Chairman and members of the Committee: We appreciate the opportunity to provide this testimony on the protions of S. 807, the Federal Assistance Improvement Act, which have been referred to the Rules Committee.

We represent a broad range of interests: Housing, food, civil rights, employment, education, health, rights of disabled citizens, the elderly and children. Some members represent beneficiaries: others represent those who serve them. Despite our diversity, we are united in our concern that enactment of S. 807 in its present form would cause sweeping and in many cases, damaging, changes in the fundamental federal-state-local support systems essential to the survival of millions of vulnerable Americans of all ages and social groups.

We applaud the sponsors of this legislation for addressing some of the most complex and challenging aspects of the relationship between the federal government and recipients and beneficiaries of its programs. We do share a common goal of seeking maximum effectiveness from federal programs and resources in meeting national needs.

We believe that some of the changes made by S. 807 would move us closer to that goal. The financial management and auditing procedures of S. 807's Title II, for example, will improve program administration without sacrificing fiscal responsibility.

The referral of portions of S. 807 to Rules is a positive step toward thoughtful and considered judgment about key portions of the proposed legislation. We endorse that referral and intend to address most of our comments to the sections before you.

However, we are compelled to state before this committee that many portions of S. 807 which have not been referred to you could be extremely destructive and disorienting to the federal-state-local partnership. We hope that in you roles as individual members of the Senate and other committees, you will examine these other provisions is depth and request the leadership to postpone and full Senate action on the bill until the issues have been fully aired and the problems alleviated. A statement of some of our concerns about these portions of S. 807 is attached to this testimony.

Our testimony consists of three parts:

1. A perspective on the importance of the federal assistance role and the need for systematic, considered Congressional decision making about proposed changes.
2. Comments on particular problems contained in the proposed Title I of S. 807.
3. A summary of concerns about sections of S. 807 not before this committtee.

1. PERSPECTIVE ON THE FEDERAL ASSISTANCE ROLE

We hope that in considering the proposed section 1005 (c) through (f), the committee will re-examine the reasons that federal assistance programs have been created and the role that they have played in moving us toward a healthier and more just society.

It is true that some federal assistance programs have failed, or have created administrative burdens for state and local governments which outweigh the value of the federal requirements. We do not contend that every federal categorical program, regulation, or civil rights compliance order has worked. It is healthy that we are now assessing what has worked, what did not, and why.

But many federal assistance programs have worked. As a result of the programs passed by Congresses in the 1960's, fifteen million Americans were removed from poverty. As a result of the civil rights laws of the 60's, thousands of black young people got an opportunity to go on to college, law and medical schools. The number of black lawyers increased by 25 percent and black doctors by 48 percent.

Medicaid has helped close the health care gap between the poor and the non-poor. A Public Health Services study has shown that Medicaid, in combination with Medicare, is the primary cause for the declining importance of income as a determinant of health care utilization in this country.

Nutrition programs have had enormous impact. In the late 1960s the Field Foundation found widespread hunger and malnutrition among the poor of the United States. A decade later, the Foundation found that the health and well-being of poor families in the communities it had studied were greatly improved. It identified Food Stamps as the key factor in this change. Studies have shown that the WIC program of nutritional supplements for mothers and children nutritionally at risk has significantly reduced infant mortality rates and the incidence of low birth weight infants, who often require long and costly hospitalization.

Some of these gains were possible only after federal leadership filled a vacuum left by state inaction. Before the passage of Public Law 94-142, the Education of All Handicapped Children Act, over two million children were out of school altogether. Countless more were in school but were inappropriately placed or were not getting the services they needed.

Many of these children could have made giant steps with appropriate educational services; research has shown that there are real differences among children with special needs, and that with appropriate instruction all such children can improve the extent to which they are independent. Yet many states were unable or unwilling to meet the special needs of these children: 48 of the 49 states with compulsory attendance laws exempted handicapped children from compliance. The scarcity of knowledge, programs, funds, and commitment to helping special needs children and their families was staggering. Federal assistance in this area was necessary, appropriate, and effective.

Sometimes special federal protections attached to assistance programs are as important as the provision of the assistance itelf. Shortly after the enactment of the Elementary and Secondary Education Act, an education program for educationally disadvantaged children, federal auditors found problems. Money was spent in some localities on band uniforms, portable swimming pools, and construction rather than on instructing low-income children in basic learning skills. As Congress built on program experience, initially ambiguous provisions became more focused. As legislation became more specific about program requirements, the program became more successful in targeting remedial services to disadvantaged students. And those students increasingly showed dramatic improvement in reading and mathematic skills.

As we have seen this year, proposals for "consolidation" of such programs often include repeal of fundamental rights and protections contained in them. For example, if proposed block grants in education and social services had been adopted in their original form, handicapped children would have lost their right to an appropriate education; and homeless children, their right to preventive services, adoption assistance and case reviews which make it possible for them to obtain a permanent, secure home and family.

A consolidation process that denies Congress adequate time and information for consideration invites serious unintended consequences. For example, programs with similar primary goals often have substantially different impact of jobs, economic development and the efficacy of services provided. The process proposed in S. 807

offers no assurance that the necessary data and time required to analyze and anticipate such consequences would be available to the Congress.

Congress has historically played an important role in shaping federal assistance policies. Authorizing committees have built up a wealth of expertise about the operation of the programs within their jurisdiction. Amendments, both in committee and on the floor, often tighten and improve legislation. Hearings and debate sharpen Congressional understanding of fundamentally important issues. Yet the "fast track" would make Congress a reactor rather than an equal partner in making basic decisions about the role of federal assistance.

To the extent that the legislative process is abused, or stands in the way of important change, the Senate already has the tools to respond: it can vote to discharge a committee, to limit debate, or to refuse reconsideration. The "fast track" is unnecessary to deal with abuses and inappropriate insofar as it creates a new, more junior role for Congress in making decisions which have historically been legislative ones.

2. COMMENTS ON TITLE I

We urge you to read and assess sections 1005 (c) through (f) in combination with those portions of Title I not referred to the Rules Committee. Only by looking at all components of this Title I can the full impact of the proposed consolidation process be understood. The following components of Title I not referred to you particularly deserve your scrutiny:

The extremely broad definition of "functionally related" would allow Congress to consolidate all of the programs within a budget function in one "fast track" action. In the case of Function 500, this could affect some $30 billion worth of employment, social services and education programs. In the case of Function 400, it could mean some $25 billion in transportation programs.

Allowing all programs in a consolidation to be administered according to the "terms and conditions" of any one of those could create a classic situation of the "tail wagging the dog." Using the Function 500 example: Should we jump so quickly to propose that funds for child welfare services to homeless children be distributed under what had previously been a CETA formula? This is a complex judgment which requires time and analysis—not to be made under threat of a deadline.

Proposed consolidation plans would have to contain an analysis of the potential costs of administration and implementation, but not of the benefits.

The only way that a consolidation plan could be amended is through a Presidential decision to request a modification. No Congressional committee and not even either full House could make a change in a plan if it was not in complete agreement with the President.

A 90-day time limit for Congressional action on a plan is simply too short. Congress should not be required to make decisions on such broad and differently constructed range of programs, purposes, formulas, etc. without adequate time to understand the consequences of such actions.

Specific problems in the sections before this committee include:

Lack of definition of "committee of primary jurisdiction". If a consolidation of all activities in Function 500 were proposed, which committee would have "primary jurisdiction"?

It is not clear whether all committees with jurisdiction over programs in a consolidation would have a chance to review it; or if the privilege falls only to two committees.

Lack of amendability in both committee and floor action. This sets a dangerous precedent for arbitrary and capricious Congressional decision-making, and seriously threatens the authority of Congress to participate at all in substantive reworking of proposals made by the executive branch.

In sum, we urge the Rules Committee to strike Section 1005 (c) through (f) from S. 807, and to recommend that the Senate reject the "fast track" consolidation process embodied in all of Title I of the bill. We reaffirm our faith in the legislative process and in the importance of protecting Congress as an independent, representative body with an equal—not subservient—role to the executive and judicial branches in our federal system.

3. COMMENTS ON PORTIONS OF S. 807 NOT REFERRED TO RULES

As mentioned earlier, several other titles of S. 807 deserve the fullest attention and analysis before a Senate action is taken. The following section calls attention to some provisions of particular concern to us.

A. Title III, creating a uniform process for developing standard regulatory and compliance provisions for any "generally applicable requirement" affecting federal assistance programs.

These requirements include civil rights provisions, guarantees to equal access to services, equal employment requirements, labor practices requirements (such as Davis-Bacon Act); and other important employment and environmental protections.

Our objections to these titles are based on four concerns. First, the process they create is unnecessary. The President already has authority to designate a lead agency to oversee development of cross-cutting regulations and to monitor government-wide implementation of cross-cutting requirements.

The President has exercised this option in the past, for example by designating the Department of Justice as the lead agency for implementation of Title VI of the Civil Rights Act of 1964.

Second, creating standard regulations and compliance procedures is appropriate in some, but not all, programs. Standardizing cross-cutting requirements may sacrifice important protections. A provision which addresses equal services in highway construction programs will not adequately address migrants' access to medical care or the elderly's access to subsidized housing. Anti-discrimination provisions carefully developed to reflect the service delivery issues particular to given programs could be lost.

Standardizing monitoring may weaken meaningful evaluation. Different programs require different data and different monitoring approaches. Equal access to services under the Urban Mass Transportation Act depends on geographical data such as information on route scheduling and age and quality of buses assigned to routes. This approach is meaningless in monitoring placement of handicapped children in the least restrictive educational setting possible.

Third, we are concerned about the minimal opportunities for public participation in the process for developing cross-cutting regulations and compliance procedures. Federal asssistance recipients and beneficiaries deserve a voice in regulatory changes which may have a profound impact on them. This is of particular importance when we visualize that, increasingly, federal money may be distributed to state and local governments totally lacking targeting and other protections which would ensure cost-effective expenditures and accountability.

S. 807 contains no clear opportunity for prior notice and comment, and the relationship of the procedures outlined in the bill to Administrative Procedure Act ("APA") requirements is unclear. Some agencies affected by cross-cutting regulations are subject to APA notice and comment requirements. Others, while also potentially affected by cross-cutting regulations, are exempt from the APA. The relationship of S. 807 to the APA must be clarified.

Fourth, we are seriously concerned that a provision in S. 807 would allow the President to suspend implementation of a cross-cutting standard for up to 180 days if he finds that implementation will lead to "serious, unanticipated consequences." This provision authorizes the President to suspend operation of statutorily mandated federal assistance policy without consent of Congress. As the bill is drafted, it suggests that fundamental federal assistance requirements, including civil rights provisions, could be suspended after pre-existing regulations had been repealed, leaving a complete vacuum for up to half a year. If the intent of this provision is to suspend operation of a cross-cutting standard while leaving in place the pre-existing regulations, this intent must be clarified.

B. Changes in maintenance of effort requirements and single state agency provisions may drastically cut benefits to beneficiaries and undermine uniform program administration.—Two provisions in Title VI of S. 807 give rise to serious question. First, Title VI provides that, regardless of authorizing legislation which requires that a single state agency administer federal assistance, a federal agency head can waive the single agency requirement and allow states to delegate administrative responsibilities to multiple state or local agencies.

The provision for waiver of single state agency requirements allows federal agencies to reverse a Congressional finding that a single agency is necessary to properly administer a particular program. In federal assistance programs such as Medicaid and Aid to Families with Dependent Children, which require statewide program uniformity, waiver of this single state agency requirement may result in balkanized, inefficient, and inequitable administration and policies which differ by locality. Enforcement of overarching program requirements would be difficult, since there would not be one agency with responsibility and accountability for the program. There may be programs in which federal agencies should have the flexibility to determine the appropriate state or local administrative structure. But it is inappropriate to create wholesale waiver provisions.

C. Title VI would repeal all existing maintenance of effort requirements which guarantee that federal assistance will supplement, not supplant, state or local expenditures.—Under Title VI, all future maintenance of effort provisions would include standard language outlined by the bill. Since the provision repeals all existing maintenance of effort provisions and creates a standard provision for inclusion in future legislation, it leaves an enormous gap; unless Congress acts to pass maintenance of effort provisions for each existing federal assistance program, each program may lose the state or local funds heretofore contributed.

Requiring Congress to review each federal assistance program to evaluate whether a maintenance of effort provision should be reinstituted will place a heavy burden on authorizing committees. Yet unless Congress undertook a program-by-program review of each and evey program containing a maintenance of effort requirement, program benefits could be cut back sharply because of the loss of the state and local contribution.

Further, because S. 807's standard maintenance of effort provision may differ substantiallly from existing provisions, substitution of the standard provision may have unanticipated results: it may dramatically adjust the required state or local share upward or downward. Absent a careful review of how such a standard provision would change the state or local role in assistance programs, substitution of the standard provisions is premature and unwise.

CONCLUSION

We appreciate the opportunity to submit our comments on S. 45 and S. 807. As advocates experienced in working with federal assistance programs, we appreciate as well the Committee's sensitivity to problems in administering those programs. We, too, are eager to see programs improved where appropriate and necessary. But we urge that such changes be made thoughtfully; where the solutions are ill-advised, or have consequences which threaten underlying program purposes, they are neither "reform" nor "improvement".

The CHAIRMAN. The Senator from Delaware, Mr. Roth, and Mr. Melcher, as well, wanted to be here today. They were unable to be present, and I shall submit their prepared statements for inclusion in the record.

I also want to submit for the record the letter that the ranking minority member, Mr. Ford, and I sent to fellow chairmen and all ranking minority members, together with a staff memorandum which contains a summary of the five important titles, in Senate bill 807.

And also I submit for the record the Congressional Reference Service statistical summary of congressional approval and disapproval legislation, which I think can be informative to everyone in considering this new addition to that kind of legislation.

[The following were received for the record:]

PREPARED STATEMENT OF HON. WILLIAM V. ROTH, JR., U.S. SENATOR FROM THE STATE OF DELAWARE

Mr. Chairman, today the Senate Committee on Rules and Administration will examine the provisions of Title I of S. 807 that will affect the rules of the Senate. I am pleased to have this opportunity to reiterate the importance of the "Federal Assistance Improvement Act of 1981", and to state for the record the rationale and need for the expedited congressional procedures contained in Title I of the bill.

While today's hearing focuses on the Senate rules affected by Title, I, this issue cannot be divorced from that of the serious imbalance that has arisen in our Federal assistance system. That the centralization of authority and fiscal resources in Washington has disrupted and distorted our system of American Federalism has long been recognized by experts in intergovernmental relations, yet this problem has not been adequately or consistently addressed. S. 807 is a reasonable response to the need to revitalize American Federalism. It is to the broader issue of aid reform that I will turn before I address the specific issues of the Title I procedures.

In the last twenty years our Federal aid system grew at an impressive rate as many issues were addressed for the first time by the national government. Between 1960 and 1980 Federal aid to State and local governments grew over eleven fold from $8 billion to over $88 billion. The actual number of aid programs expanded

four fold to nearly 500. While many useful and important public issues have been addressed through these aid programs, every person familiar with intergovernmental relations knows that the current system for aid distribution has some very undesirable side effects. The proliferation of narrowly focused, relatively small dollar categorical grants has resulted in fragmentation of the servicing effort in the State and local jurisdictions that administer the programs. Each one of these pygmy grants carries its own set of planning, application, reporting, management and auditing requirements. The result is a mountain of paperwork and a substantial drain on the program dollars in order to pay for the administrative costs of the system.

The paper weight of the system is only one aspect of the problem, however. The creation of this array of Federal programs has had the effect of limiting the discretion of elected officials at the subnational level. Because programmatic control is increasingly held in Washington, while management responsibility is passed down the intergovernmental line, States and localities are becoming mere administrative appendages of the Federal Government. In this process the strength of the 10th Amendment to the Constitution is eroded, and the public becomes evermore alienated from all of its public institutions.

The manifestations of this policy dictation from Washington are clear, coming either in the form of direct mandates placed upon subnational units of government, or in the form of requirements that must be met in order to receive Federal funds. The direct mandate is often imposed without any Federal funding to support the local compliance effort, and without any sensitivity to the diversity of needs and resources that are represented across our nation. The conditions on aid that are generally applied to grant programs are particularly onerous because of the degree to which they vary and even conflict from one program to another. The Office of Management and Budget under the Carter Administration compiled a list of over sixty of these requirements that deal either with policy or administrative aspects of Federal aid delivery. A recent study completed by the Joint Economic Committee concluded that in six Federal grant programs administered by localities, the added costs of these and other requirements for the programs imposed upon individual taxpayers within the recipient jurisdictions amounted to $25 per person.

These problems of imbalance and inflexibility have been exacerbated by the haphazard pattern of growth that the system has experienced in the last two decades. Yet the need to redress these deficiencies was recognized long before the recent period of rapid Federal expansion. The widely respected Hoover Commission working in the late 1940's cited a number of liabilities inherent in the categorical approach to assistance, as it stated the following:

"Grant programs are unrelated; they are uncoordinated; and they have developed in a haphazard manner without any one agency—Federal or state—concerned with the overall impact and the overall effects of grants-in-aid upon the general operations of government.

"Grants-in-aid have altered state service patterns and total state programs. Available Federal funds for matching purposes stimulate or "persuade" the states in many instances to expend large sums for an aided program while, of necessity, other needed services are neglected. The public assistance program as contrasted with the general relief program is one among many examples.

"The grant-in-aid method has removed large areas of discretionary power from the hands of state officials and has transferred a measurable degree of policy making and ultimate responsibility and control for public services to the National government."

The Commission recommended that the grant system be clarified and systematized, using the "block grant" concept: "A system of grants should be established, based upon broad categories—such as highways, education, public assistance and public health. . . ."

Additionally, the Advisory Commission on Intergovermental Relations on two separate occasions has recommended the consolidation of grants which are closely related functionally, similar or identical in their objectives, and linked to the same recipient governments.

In light of these sorts of recommendations, numerous congressional hearings have been held to express sincere bipartisan support for the need for grant consolidation. These forums have cataloged the complaints and frustrations of the State and local officials who must perform within this arcane and convoluted system. Moreover, each succeeding Administration speaks of the need to clean up the intergovernmental muddle with which we are confronted. Yet, what has this reform interest brought about?

Prior to this year we had created five block grants and one general revenue sharing program. With each passing year, however, the block grants have been

recategorized through the addition of administrative and programmatic requirements. One of the block grants, the Law Enforcement Assistance Administration, was eliminated last year, and the General Revenue Sharing program has been mentioned as a target for deep reductions or even elimination.

This is a discouraging record for those who realize the value of flexibility and program effectiveness that the block grant approach permits in the management of Federal assistance funds. It is a record that has done little to redress the basic imbalances in the Federal aid system that I alluded to earlier. And it is a record that does not bode well for the State and local governments that will be required to meet programmatic responsibilities with fewer aid dollars in the immediate future.

A root cause of this pattern of behavior is the unwillingness of the Congress to address these basic questions of reform and balance in our Federal system. Congress created the plethora of categorical programs and recategorized the very few general purpose programs that are in existence. S. 807 in general, and Title I in particular is a direct response to this unwillingness to confront the problems in American Federalism.

Under the provisions of Title I, the President is required to periodically examine Federal assistance programs to determine whether consolidation is necessary or desirable. If the President chooses to propose a consolidation the primary committee of jurisdiction would have 60 days to consider the plan. During this time the Committee could vote favorably on the plan, thereby moving the plan to the floor of the respective House, or could vote unfavorabiy upon the plan, thereby terminating consideration of the plan. If the Committee issues no report on the plan within the 60 day period, it is automatically discharged from consideration of the plan, and the plan is placed on the calendar of the respective House. The motion to consider such a plan is privileged in the Senate and highly privileged in the House of Representatives and is not subject to amendment.

Although these Title I provisions alter the rules of the Senate, they provide a reasonable approach to the development and consideration of grant consolidation plans. First the powers of the President in this process are limited in a number of important ways. The President may not offer a plan that would call for the consolidation of any programs that are not functionally related. Second, no plan may transfer the responsibility for the administration of any Federal assistance program to an agency which did not have responsibility for the administration of any program included in the plan prior to the consolidation. Third, no group or individual may become eligible for assistance under a plan that is not eligible under one or more of the programs being consolidated. Fourth, the President may not exclude from eligibility for assistance under a plan any person or group that is eligible for assistance under one or more of the programs being consolidated.

Additionally the provisions of the Title permit the committees of primary jurisdiction to end consideration of a consolidation plan by a vote of disapproval, a point that the Rules Committee briefing memorandum for this hearing neglected to point out. The original version of the Title would not have permitted a negative Committee vote. This aspect of the Title then is a compromise that I feel adequately protects the prerogatives of the Congress.

Last, the nonamendable feature of the plans, in combination with the power of the committee of primary jurisdiction to halt the progress of a plan, will help to ensure open and candid communications between the Administration and the various committee members. If the process is to work successfully the Administration representatives must work with the members of the congressional committee in crafting the consolidation plans. In other words, this is not a "take it or leave it" proposition that diminishes the role of the committees of jurisdiction, as some critics have characterized it.

Mr. Chairman, we have strayed far from the principles of intergovernmental cooperation and accountability that characterized our system for so many years. These changes have taken place at the expense of effective service delivery and ultimately of citizen confidence in government. There is no certainty that this procedure in S. 807 will alleviate all of the constraints under which the system now labors. But it will help to correct the persistent tendency to gather power and authority at the national level. It will help to realize the changes called for long ago by the Hoover Commission, and to implement the solid recommendations of the national ACIR. It is time that we in Washington realize the high priority of a better balanced, better functioning Federal system. We can begin to bring about needed change by implementing the mechanisms encompassed in S. 807. I, therefore, strongly urge the Rules Committee to act promptly to report S. 807 favorably in its current form. Thank you.

PREPARED STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM THE STATE OF MONTANA

Mr. Chairman and Members of the Rules Committee: I appreciate the opportunity to express my opposition to Title I of S. 807.

While I am sure most Senators applaud the overall purpose of this bill, to consolidate Federal programs in order to leave greater discretion as to the use of Federal funds to the State and local governments, Title I goes entirely too far in striking at the heart of the major function of Congress.

It is unnecessary to cite the innumerable examples of the times when various Federal agencies have distorted the intent of Congress through the regulatory process. One notable recent example is the so-called Lau regulations on bilingual education which caused so much concern because of their unrealistic application in communities, such as several in Montana, educating refugee children from Southeast Asia.

The same rationale that results in such regulations is bound to surface in the minds of those in any Administration, regardless of who occupies the White House. The desirability for consolidation of programs in some cases—and education is a case in point—should not serve as an excuse to deny the Congress, as representatives of the people, the legislative prerogative that the Constitution clearly confers on the legislative branch of our Government.

If block grants are desirable—and there is reason to believe that for States like Montana some consolidation and more local discretion is in order—then this objective should be achieved by the Congress, not by Presidential fiat. I cannot accept the theory that all wisdom lies in the Office of Management and Budget, where decisions advanced by the President would obviously be made. There is increasing evidence to the contrary each day.

To propose that any Administration be granted the authority to consolidate, repeal or redirect the intent of duly enacted laws, as Title I of S. 807 in effect does, may seem attractive to those who prefer a rubber stamp Congress. I do not concur. The idea that a far reaching proposal can be considered, but not amended, by the authorizing Committee for 60 days and then come before the Senate as privileged, non-debatable and nonamendable denies the Congress its Constitutional responsibility which has been zealously guarded since the Constitution was adopted.

Mr. Chairman, we have tried the fast track approach this year on the budget resolution. We felt the pressure of the need to deal with budget cuts and yielded to the euphoria of the moment. While I voted for the Budget Reconciliation Act, I am daily made aware of many unwise provisions of this bill, which, among other things: cut benefits for elderly railroad retirees who already live on marginal incomes; denied unemployment benefits to honorably discharged veterans while providing this benefit to other-than-honorable discharged military personnel. I am sure other aberrations of this type will surface in the days ahead.

I do recognize the need to move with cautious speed to accomplish the objective of economy and efficiency and eliminate waste in Federal programs. But in face of the historic evidence that all wisdom does not lie in the Executive branch of our government, regardless of good intentions, I urge the elimination of Title I from S. 807.

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., October 27, 1981.

To: Chairmen and Ranking Minority Members of Committees of the United States Senate.

On October 20, 1981, S. 807, the "Federal Assistance Improvement Act of 1981" was referred to the Committee on Rules and Administration for 20 days for consideration of subsections (c) through (f) of section 1005 of Title I.

Hearings have been scheduled for Monday, November 2, at 2:00 PM, with markup on Friday, November 6, at 9:30 AM, in Room 301, Russell Senate Office Building.

Briefly, the bill will create new authority for the President to propose consolidations of Federal assistance programs. The provisions of the bill before the Rules Committee govern the consideration of such grant consolidation plans by committees and on the floor of the Senate and the House of Representatives.

The views of committee chairmen and ranking minority members will be of significant benefit to this committee in considering these provisions, and you are invited to testify on November 2 or to submit a statement for the record.

A brief summary of the provisions of S. 807 which are before the Rules Committee is attached.

Sincerely,

CHARLES McC. MATHIAS, JR.,
Chairman.

WENDELL H. FORD,
Ranking Minority Member.

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., October 27, 1981.

Memorandum to: Rules Committee members.
From: Joe diGenova, Staff Director.
Subject: S. 807.

S. 807, the Federal Assistance Act of 1981, was referred on October 20, 1981, to the Rules and Administration Committee for 20 calendar days of consideration with instructions that the committee shall restrict its examination to title I, section 1005, subsections (c) through (f) of the bill. The Rules Committee has scheduled one day of hearings on this measure—Monday, November 2, 1981, at 2:00 p.m. in the Committee hearing room, RSOB, Room 301, and mark-up on Friday, November 6, at 9:30 a.m.

S. 807 was reported on June 15, 1981, by the Governmental Affairs Committee with an amendment in the nature of a substitute. As reported, title I of the bill would direct the President to examine periodically all Federal Assistance Programs to determine the necessity or desirability of consolidation of any such program. Upon such a determination, the President would transmit to the Congress a consolidation plan for functionally related programs. Each plan would be referred to a single committee of primary jurisdiction in each House. These committees would have only 60 days in which to report favorably on such a consolidation plan; moreover, these plans could not be amended. If no report were made within the prescribed 60 days, the Committee would be automatically discharged and the President's grant consolidation plan would be placed on the calendar of each respective house in the form of an un-amendable joint resolution. Motions to proceed to the consideration of these joint resolutions would be in order at any time following the report or discharge of the primary committee (or secondary committee, if so re-referred) and would be deemed privileged, non-debatable, non-amendable, and non-postponable motions. Moreover, it would not be in order to proceed to the consideration of other business while such a motion relating to the consideration of a Presidential grant consolidation plan was before either House of Congress, nor would it be in order to entertain a motion to reconsider the vote by which such a resolution was agreed to or disagreed to.

If enacted, S. 807 would grant the President broad powers to:

Name the programs to be consolidated under such a plan;

Place responsibility for administration of the consolidated programs in a single agency; and

Specify in detail the administration of the consolidated programs, ". . . including a specification of requirement such as State and local matching for Federal funds, allotment and apportionment, financial management, planning, and eligibility to be used in the plan . . ."

Title I also mandates the sunsetting, within at least six years, of all approved Presidential grant consolidation plans.

Titles II through VI of the Governmental Affairs reported measure cover the following:

Title II establishes consistent audit requirements to promote more efficient use of Federal, State and local audit resources and to improve the financial management of Federal assistance. It requires use of the unified federal audit, and greater federal acceptance of State and local audits which meet specified performance standards.

Title III creates a process for standardizing regulatory and compliance provisions for any "generally applicable requirement" attached to federal funding of programs operated by state and local governments or non-governmental entities. This title further permits recipient governments to certify that they are in compliance with state and local requirements that are at least equivalent to the standard rules and regulations.

Title IV strengthens the Joint Funding Simplification Act of 1974 to encourage wider use of this grant management tool. The title requires greater federal agency

participation in the joint funding process and permits recipients to account for integrated grant funds as though derived from a single federal assistance program.

Title V permits recipients to shift a 20 percent portion of federal assistance funds received among programs in the same functional area.

Title VI repeals all standard maintenance of effort provisions in federal assistance legislation, prohibits federal interference in State oversight of federal funds, provides for advance notice to recipients of federal funds when a federal agency acts to alter a funding agreement with such a recipient, and permits recipients to exercise flexibility in compliance with federal program regulations which undergo major changes.

STATISTICAL SUMMARY OF CONGRESSIONAL APPROVAL AND DISAPPROVAL LEGISLATION, 1932-1980

This report provides information on the quantity and types of congressional veto measures that have been enacted by Congress. Based on data compiled in various searches during the last few years, an attempt has been made to locate all relevant statutory provisions adopted since 1932. Despite possible omissions or errors in counting, it is believed that the totals are sufficiently accurate to indicate the overall quantity of such provisions as well as the relative number of the different types of congressional veto procedures adopted by Congress.

The data is presented in three tables. The first summarizes statistics for such laws adopted since 1932 according to the type of procedure authorized by those acts. The second tabulates according to procedure the number of provisions enacted during the year 1980 only. The third lists the various types of congressional veto procedures in descending order according to the number of such provisions passed since 1932.

TABLE 1. Number of Acts and Provisions by Types of Procedure

Types of procedure	Number of acts	Number of additional provisions in acts	Total number of acts and provisions
DISAPPROVAL RESOLUTIONS			
1. Simple resolution, either House pass	56	36	92
2. Concurrent resolution, both Houses pass	40	14	54
3. Concurrent resolution, both or one House alternative pass	1	0	1
4. Joint resolution, both Houses pass	5	1	6
Total disapproval resolutions	102	51	153
APPROVAL RESOLUTIONS			
1. Concurrent resolution, both Houses pass	16	11	27
2. Joint resolution, both Houses pass	6	4	10
Total approval resolutions	22	15	37
DISAPPROVAL BY COMMITTEE			
1. Committee in either House	9	2	11
2. Committees in both Houses	2	0	2
Total disapproval by committee	11	2	13

TABLE 1. Number of Acts and Provisions by Types of Procedure--Continued

Type of procedure	Number of acts	Number of additional provisions in acts	Total number of acts and provisions
APPROVAL BY COMMITTEE			
1. Committee in either House	1	0	1
2. Committees in both Houses	45	10	55
3. Come into agreement with committees	5	0	5
4. Joint committee	1	0	1
5. Subcommittees in both Houses	2	0	2
6. Committee chairman, one House	1	0	1
Total approval by committee	55	10	65
APPROVAL BY ACT OF CONGRESS	2	1	3
APPROVAL BY CONGRESSIONAL AGENCY (OTA)	1	0	1
Totals	193	79	272

TABLE 2. Number of Acts and Provisions by Types of Procedure for Year 1980—Continued

Types of procedures	Number of acts	Number of additional provisions in acts	Total number of acts and provisions
DISAPPROVAL RESOLUTIONS			
1. Simple resolution, either House pass	3	13	16
2. Concurrent resolution, both Houses pass	7	1	8
3. Concurrent resolution both or one House alternative pass	1	0	1
4. Joint resolution, 60th Houses pass	1	1	2
Total disapproval resolutions	12	15	27
APPROVAL RESOLUTION			
1. Concurrent resolutions both Houses pass	1	3	4
2. Joint resolution, both Houses pass	2	2	4
Total approval resolutions	3	5	8
DISAPPROVAL BY COMMITTEE			
1. Committee in either House	0	0	0
2. Committees in both Houses	1	0	1
Total disapproval by committee	1	0	1

TABLE 2. Number of Acts and Provisions by Types of Procedure for Year 1980—Continued

Types of procedures	Number of acts	Number of additional provisons in acts	Total number of acts and provisions
APPROVAL BY COMMITTEE			
1. Committee in either House	0	0	0
2. Committees in both House	2	0	2
3. Come into agreement with committee	0	0	0
4. Joint committee	0	0	0
5. Subcommittees in both Houses	0	0	0
6. Committee chairman, one House	0	0	0
Total approval by committee	2	0	2
APPROVAL BY ACT OF CONGRESS	2	1	3
APPROVAL BY CONGRESSIONAL AGENCY (OTA)	0	0	
Totals	20	21	41

TABLE 3. Numbers of Statutory Provisions According to Major and Minor Types of Procedures

Types of procedures	Numbers of provisions
MAJOR TYPES	
1. Disapproval by either House (simple resolution)	92
2. Disapproval by both Houses (concurrent resolution)	54
3. Approval by committees of both Houses	55
4. Approval by both Houses (concurrent resolution)	27
	228
MINOR TYPES	
1. Disapproval by committee of either House	11
2. Approval by both Houses (joint resolution)	10
3. Disapproval by both Houses (joint resolution)	6
4. Come into agreement with committees	5
5. Approval by both Houses (Act of Congress)	3
6. Approval by subcommittees both Houses	2
7. Disapproval by both or by one House alternative (concurrent resolution)	1
8. Disapproval by committees of both Houses	2
9. Approval by committee in either House	1

TABLE III. Numbers of Statutory Provisions According to Major and Minor Types of Procedures—Continued

Types of procedures	Numbers of provisions
MINOR TYPES	
10. Approval by joint committee	1
11. Approval by chairman of a committee	1
12. Approval by a congressional agency (OTA)	1
	44
Total	272

CFN/mhb

The CHAIRMAN. It is the expectation of the Chair that the Rules Committee will meet on Friday morning, November 6, at 9:30, for the purpose of marking up the bill and for making a report to the Senate, which should be submitted there on Monday, November 9.

The hearing record will remain open through Friday for any written statements that are submitted.

Once again, thank you very much. The committee stands adjourned.

[Whereupon, at 4:42 p.m., the committee was adjourned.]

[Prepared statements and letters, subsequently received by the committee for the hearing record, are as follows:]

PREPARED STATEMENT OF HON. LOWELL WEICKER, JR., U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, I appreciate the opportunity to comment on S. 807, the Federal Assistance Improvement Act of 1981. Although I recognize the need for improvement in Federal grants to states and localities, a number of provisions in the bill trouble me. Powers granted under Title I of this bill would allow the President to not only choose which programs to consolidate into block grants, but also the form in which these programs would be consolidated. The President's recommendations could only be approved or disapproved—no amendment to them would be allowed at any stage in the process described by this Act. In addition to the extensive authority granted to the President, Congress would be forced to act on consolidation proposals within the relatively short time span of ninety days. Furthermore, all proposals would be considered highly privileged; no debate, no amendments, no postponement, and no motions to reconsider the bill would be in order.

I consider these proposals outrageous.

As Chairman of the Labor and Human Resources Subcommittee on the Handicapped, I spent many hours this past summer negotiating with members of the executive branch over their block grant proposals. Only after a great deal of time and effort were we on the Subcommittee able to work out a compromise to the Administration's block grant proposals. But Title I of S. 807 would completely destroy the ability of members of Congress to make such negotiations. Instead Congress would merely have the authority to approve or disapprove of the President's plan.

Imagine the possible scenario if this process is implemented. The President might suggest that all programs under the jurisdiction of the Labor and Human Resources Committee be consolidated under one block grant. The President might also suggest, as he did earlier this year, a 25 percent reduction in spending under these programs. A Committee chairman, sympathetic to the President's budget cutting pro-

posal, would then be able to bring the proposal to the floor, in the form in which it was submitted by the President, as a highly privileged motion. Then, without one word of debate, and without any amendments, the grant proposal might then be passed. Senators criticized for making such drastic cuts would then be able to respond that they passed the measure only out of loyalty to the President.

Is this the kind of efficiency we really want to promote?

More importantly, are these provisions of the bill consistent with the traditional system of checks and balances between the legislative and executive branch of our government? It seems to me a reversal of traditional practice—if S. 807 were passed the executive branch would write legislation, and the legislative branch would then exercise the authority to either veto or accept the measure.

I certainly do not think the Senate should accept the bill in its present form. Although there are some good things in the bill which would increase the efficiency of the federal grant program, the provisions included under Title I of this act, and other provisions dealing with cross-cutting requirements, transfer of funds between programs, and maintenance of effort restrictions, are woefully inadequate in terms of true efficiency. As it stands now, the bill allows the President to speed block grant legislation through Congress at the expense of normal deliberative procedure.

Rather than following a similar procedure with regard to S. 807, I would hope, and recommend, that Congress carefully consider this bill in its entirety before reporting this matter to the floor.

U.S. SENATE,
Washington, D.C., November 4, 1981.

Hon. CHARLES MCC. MATHIAS, Jr.,
Chairman,

Hon. WENDELL H. FORD,
Ranking Minority Member, Committee on Rules and Administration, Russell Senate Office Building, Washington, D.C.

DEAR MAC AND WENDELL: I understand that the Committee on Rules and Administration will be meeting tomorrow to consider certain portions of section 1005 of title I of S. 807, the proposed "Federal Assistance Improvement Act of 1981", and I wanted to share with you my very grave concerns about the provisions of this bill which would establish an extraordinary "fast-track" procedure for consideration of Administration proposals to convert existing categorical programs into block-grant programs.

I believe that the transformation of categorical programs into block-grant programs is a highly controversial, complex, and important process that ought to provide for thorough, careful review by the Congress and the public. The basic thrust of title I of S. 807—to create an expedited process for consideration of block grant proposals—short-circuits the rights of all concerned to participate fully in the legislative process.

Specifically, I strongly oppose those provisions of title I which would limit the authority of authorizing committees to alter or modify any of the provisions of the Administration's block grant proposal; deny certain authorizing committees (so-called secondary committees) jurisdiction to disapprove a resolution of approval; provide for automatic discharge of the proposal after 60 days; provide the proposal status as a privileged matter on the Senate calendar; and prohibit floor amendments, debate on the motion to proceed, or a motion to reconsider the vote by which the resolution is agreed to or disagreed to.

Frankly, I do not see any realistic approach to curing the basic problems in section 1005 of title I. Its entire purpose of bypassing the normal legislative process is, in my view, inappropriate. I urge that the Committee recommend unfavorably with respect to this entire section.

Please note that I have restricted my comments to the matters presently before your Committee. For the record, let me note that although there are apparently beneficial aspects in other titles of the bill, those titles as well as other parts of title I include a number of provisions about which I have serious concerns.

With warm regards,

Cordially,

ALAN CRANSTON.

PREPARED STATEMENT OF FRANCISCO GARZA, LEGISLATIVE DIRECTOR, NATIONAL COUNCIL OF LA RAZA

Mr. Chairman and fellow members of the Senate Committee on Rules and Administration, the National Council of La Raza (NCLR) appreciates the opportunity to submit this testimony in opposition to Section 1005 (c)-(f), Title I of S. 807, the Federal Assistance Improvement Act of 1981. The Council is a private, nonprofit national Hispanic organization dedicated to the improvement of the social, economic, and political well-being of Hispanic Americans in the United States. As one of its four main functions, the Council conducts research and policy analysis on public policy issues of critical importance to Hispanics. The question of the consolidation of federal assistance programs is especially important to Hispanics, and in this light, we appreciate the opportunity to submit our comments and concerns regarding this process.

The expressed goals of S. 807 are simplication and better coordination of the management of federal assistance programs, to allow greater flexibility and minimize administrative overhead. While this, in and of itself, is an extremely desirable goal, the National Council of La Raza opposes blanket consolidation proposals which are more concerned with process than with achieving Congressionally mandated goals and objectives. Specifically, the Council is adamantly opposed to the "fast-tracking" approach to the introduction and implementation of Executive Branch consolidation plans as contained in Section 1005 (c)-(f) of S. 807. This section, if enacted, would completely abridge the constitutional separation of powers by permitting the Executive Branch to exercise quasi-legislative powers and effectively thwart the legislative process of the Congress itself.

The intrusion into the separation of powers under Title I is evident since by its provisions, consolidation plans cannot be amended by traditional procedures in the Congress. Rather, plans submitted by the Executive Branch must receive either an up or down vote by the "committee of primary jurisdiction," and in final action. Also, it is not entirely clear in S. 807 which is the "committee of primary jurisdiction". Moreover, the fast-track approach forces committee level action within 60 days or the proposal is automatically discharged to the floor for a vote, and final action must take place within 90 days of continuous session from the day the plan is submitted. It is inconceivable that Congress would be able to conduct thorough analyses of such proposals within these time constraints, when consolidation plans may encompass entire functional categories of the federal government and affect such complex social programs as Social Security, education, and other social services. The U.S. Congress is charged with the public deliberative responsibility in the enactment and reshaping of this country's laws and public policy, and this process must maintain its integrity in order to preserve our freedom of existence.

At issue with S. 807 is the ability of the people to influence government decision-making, and to work with their elected representatives in Congress in investigating and designing sound and effective public policy. The Congress, not the Executive Branch, is held accountable for program policy and for the authorization of specific programs to meet the needs of all the people—including the poor, the minority and the disadvantaged. For Congress to enact legislation which would not even permit it to amend consolidation proposals is to abrogate the responsibilities of the Legislative Branch. Hispanics, like other minority and disadvantaged subpopulations, hold their Congress members accountable for the programming which so significantly affects their lives. Our tri-partite form of government will be severely threatened if Congress abandons its decisionmaking responsibility regarding major publicly supported programs.

As a backdrop to our opposition to those sections of S. 807 which were referred to the Rules Committee, the Council would ask the Committee to consider some of the concerns of Hispanic communities over the consolidation of federal assistance programs—concerns which can be addressed only if Congress maintains its traditional leadership responsibility regarding program authorization and appropriations:

Targeting.—One of the main objectives of most categorical programs is targeting the delivery of services to those persons with the greatest need. Under block grants such as those enacted recently by the Omnibus Reconciliation Act of 1981, however, targeting provisions are not contained in the legislative language, thus undermining a Congressionally intended objective. With a median income only two-thirds that of the total population, Hispanics are especially likely to suffer from this lack of targeting.

Accountability.—Data collection and record keeping are of very low priority in the administration of block grants, and the regulations released to date contain minimal reporting requirements. Without data showing beneficiaries, the federal government has little ability to monitor state and local attempts to meet national objectives.

Civil Rights.—Through the civil rights offices of federal agencies administering federal programs, Hispanics and other minorities have been accorded some measure of equitable participation in federal programs. However, block grants do not, for the most part, include specific provisions for the enforcement of civil rights or equal employment opportunity requirements, although the activities undertaken fall within the coverage of current civil rights legislation. Without adequate reporting requirements, the data needed to assess compliance with civil rights legislation will be unavailable. Moreover, NCLR has been informed by high-ranking department officials that the agencies plan to leave civil rights enforcement to the states, and become involved if, over time, state enforcement is judged inadequate.

Maintenance of Effort.—NCLR fears that some programs which are successfully operating under current categorical programs might be indiscriminately eliminated by state officials under the block grant system. Without provisions for the maintenance of existing efforts, program continuity will be broken, and the delivery of essential services may be interrupted, curtailed, or totally abolished. The government is currently witnessing a retreat on programs which have been serving needy individuals and communities as recent block grants are implemented. The present transition in government must be monitored and carefully examined for any gaps in services. If additional consolidation plans are submitted to Congress, the fast-track approach is simply not conducive to the analysis of impact required to assess the revolution in government.

The National Council of La Raza supports the goal of government efficiency, but believes this goal can be achieved best through present Congressional procedures. Primarily through its committee structure, the Congress has the capacity to assess the maze of impacts of block grants, budget cuts, and program consolidation to investigate whether Congressionally mandated goals and objectives are being met.

For the reasons detailed above, the National Council of La Raza strongly recommends that Section 1005 (c)-(f) of Title I be deleted from S. 807 to ensure that Executive Branch consolidation plans be exposed to traditional Congressional procedure and public deliberation, and that Congressional powers not be abridged.

On behalf of the National Council of La Raza, and the Hispanic community in the United States, thank you for the opportunity to submit these comments for the official record.

FRIENDS COMMITTEE ON NATIONAL LEGISLATION,
Washington, D.C., October 30, 1981.

Senator CHARLES MATHIAS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: We have recently learned that S. 807, the "Federal Assistance Improvement Act" will be heard in Senate Rules Committee on Monday. This bill includes some rather startling and far-reaching changes in legislative processes. We want to draw your attention to some of these provisions and urge you to strike these sections from the bill.

Title I, which was specifically referred to Rules Committee, amends Senate rules to speed up congressional action on block grants. This Title would permit the President to propose legislation in the form of resolutions to consolidate social services programs and denies authorizing committees the right to amend the resolutions. If authorizing committees do not act to accept or reject the resolutions within sixty days, they would be automatically discharged from committee.

We believe this Title is a serious invasion of congressional authority. Moreover, in the name of "efficiency," this bill would encourage hasty and thoughtless action on very complex programs and financing arrangements.

Throughout the fast-paced and intensive budget process this year we have urged members of Congress to allow themselves time to consider the implications of the actions they've been asked to take. The dignity and importance of the work of Congress and the severity of the effects of congressional decisions on the poor of this country demand such careful thought. Congressional processes were designed to balance the will of the executive branch with the authority of a representative body. We urge you as a member of Senate Rules Committee not to allow the erosion of that authority.

Some of the other Titles which are not specifically before your committee are equally far-reaching in their effects. Title III, for example, would allow the President, the Director of OMB, or other agency heads to suspend for six months any "generally applicable requirement" in federally-funded programs. This would allow department heads to contravene the will of Congress if they find a particular congressional requirement onerous or burdensome.

Title VI would repeal all "maintenance of effort" requirements in all federal aid programs. The Title also limits the kind of legislation that Congress could adopt in this area if it should choose to reinstate some such requirements.

Title II and IV appear to be the only sections which would improve the administration of federal aid programs. We urge you as a member of Senate Rules Committee to move to strike Title I of the bill, and to exercise your leadership to see that Titles III and VI are removed from the bill elsewhere in the Senate process.

Sincerely,

RUTH FLOWER.

ELLEN NISSENBAUM,
Rockville, Md., November 2, 1981.

Senator MATHIAS,
Chairman, Rules Committee,
Washington, D.C.

DEAR SENATOR MATHIAS: I am writing to express my concerns about the Federal Assistance Improvement Act (S. 807) that your committee is currently examining.

The bill includes some rather far-reaching and disconcerting changes in the legislative process. By permitting the President to propose legislation in the form of a resolution to consolidate social programs into block grants which authorizing committees could not amend, it discourages careful consideration of crucial programs. The time allotment for action in fact, would preclude any careful examination of the President's proposals.

This bill diminishes Congressional authority, shifting influence to the Executive. Authorizing committees would lose significant means of influencing public policy. Such a change does not seem consistent with the democratic processes involved in the development and enactment of national policy.

I urge you to exercise leadership in this matter and strike those sections submitted to the Rules Committee. Programs likely to be consolidated into block grants deserve in-depth study by Congress without the balance of control unfairly shifted to the Executive. The Presidency already wields substantial influence over the Congressional processes, as we saw with the AWACS vote. I hope that you will act to prevent this bill from coming to the Senate floor and becoming law.

I would be most interested in your views on this matter, as well as the notion of consolidating entitlement programs into block grants. Thank you.

Sincerely yours,

ELLEN NISSENBAUM.

UNITED STATES CATHOLIC CONFERENCE,
Washington, D.C., November 3, 1981.

Hon. CHARLES MCC. MATHIAS, Jr.,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: The Office of Domestic Social Development of the United States Catholic Conference has for many decades concerned itself with programs for the poor. This continuing concern urges me to write to you at this time about the Federal Assistance Improvement Act. Although the goal of the Federal Assistance Improvement Act—to create efficiency in federal assistance programs—is laudable, the legislation would seriously undermine the authority of Congress.

The Rules Committee has before it several sections of S. 807, the Federal Assistance Improvement Act. The "fast track" approach for consolidation of federal assistance programs created by this legislation could have a particularly negative impact on federal assistance programs which benefit the poor.

Congress has historically played an important role in shaping federal policies. The current proposals to consolidate many federal programs present the Congress with important decisions that will have deep and lasting implications for the social welfare of our nation. Such decisions should be taken only after thorough discussion and a full opportunity for the appropriate authorizing Committees to review and amend the proposals. S 807 would place severe limitations on the ability of Congress to discuss the President's consolidation and would preclude any amendment of such proposals. I believe this would weaken Congressional authority and could endanger the basic rights of the poor who rely on federal assistance programs.

I urge you to vote to strike the sections of S. 807 which were referred to the Rules Committee and to recommend that the Senate reject the legislative procedures for consolidation of federal assistance programs embodied in the bill.

Sincerely,

RONALD T. KRIETEMEYER,
Director.

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